Supreme Court, U.S.
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No. 03-

IN THE

# Supreme Court of the United States

In re

**GABE KAIMOWITZ,**
qui tam, ex rel United States of America,
Petitioner

**On Petition for an Extraordinary Writ of Mandamus to the United States District Court for the Middle District of Florida**

## PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

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## QUESTION PRESENTED

The court of appeals denied without explanation a petition for an extraordinary writ of mandamus to order reassignment of the False Claims Act suit below to a judge outside of the U.S. Court for the Middle District of Florida. The question is whether on the basis of the facts and the course of proceedings below to date, extraordinary circumstances exist to show that the appearance of justice requires reassignment of this litigation during the early stages of pre-trial proceedings to a judge outside of said district, because of recently revealed years of ongoing *ex parte* communication between and among Defendant Orlando executives and planners and U.S. court personnel--including the judge presently assigned below; present and former chief judges of the district; at least two judges for the U.S. Court of Appeals for the Eleventh Circuit and the Clerk of the Court for the Middle District of Florida. Those ex parte communications have occurred without notice to Petitioner in this action, or to him in two other False Claims Act suits against Orlando and others.

## PARTIES

This petition for an extraordinary writ of mandamus is presented by attorney Gabe Kaimowitz *pro se* ("Kaimowitz" or "Petitioner"). Petitioner is the relator below for the United States of America, the real party in interest in the underlying action brought pursuant to the False Claims Act, 31 U.S.C. §3729, *et seq*. The Respondent is Judge Anne C. Conway, of the U.S. Court for the Middle District of Florida. She has declined to disqualify herself from presiding in this case. She found an application by Petitioner pursuant to 28 U.S.C. §144 to be legally insufficient and then declined to reconsider her refusal when information began to surface about her ex parte communications for years with Defendant Orlando personnel.

As for the Defendants below, this action was filed in camera and under seal in December 2002, to allow the U.S. Department of Justice ("the Department") to determine whether it would intervene, before they were served with the complaint. The Department declined to intervene on Nov. 10, 2003. By Order of Nov. 12, Judge Conway ordered the Defendants to be served. The Department continues to be given all papers in this litigation, since it can intervene at any time for good cause. Defendants are Orlando, a municipality created pursuant to Florida law, and Robert E. Ansley, a former Orlando assistant city planner, individually and/or in his capacities for several corporations including Orlando. Service of process is being completed. Neither Defendant was involved when the requested relief of judicial reassignment was denied at the district and appellate levels.

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## PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

## CITATIONS BELOW

The relevant rulings below are unreported. The U.S. Court for the Eleventh Circuit denied a petition for writ of mandamus on July 9, 2003, (See Appendix, p. 1-a, hereafter by page number only) and reconsideration on Sept. 17, 2003 (p. 2-a). A suggestion for rehearing en banc was denied on Sept. 17, 2003. Judges Joel Dubina and Lanier Anderson did not participate in the en banc consideration.

Judge Patricia C. Fawsett, now chief of the U.S. Court for the Middle District of Florida, initially was assigned to the litigation below. She disqualified herself on Dec. 31, 2002 (p.

3-a). Her successor, Judge Anne C. Conway declined to recuse herself on Mar. 3, 2003 (p. 4-a), or to reconsider that decision on May 20 (p. 15-a).

On May 1, Judge Conway had stepped aside "in the interests of justice" in another False Claims Act suit in which Orlando is a defendant (p. 13-a), just as Petitioner, counsel for the relator Attorneys Against American Apartheid in that litigation, began to file, in both cases, more evidence about *ex parte* communications between Judge Conway and city personnel including former Orlando Mayor Glenda Hood.

Before Judge Conway stepped down in the other case, Judges Dubina and Stanley Marcus denied a writ of mandamus seeking that result. They declined the petition on Feb. 14, 2003 (p, 9-a) and refused to reconsider on Apr. 1 (p. 12-a). They opined that evidence then available merely showed support by defendants for the judge, *id.* Judge Dubina said nothing about his own involvement in those ex parte communications (See e.g., pp. 32-a, 34-a, and 42-a).

Since the denial of the petition for writ of mandamus in this litigation on July 9 and Sept. 17, Judge Conway has entered procedural orders to unseal the record after the Department declined to intervene, and to insist on completion of service of process, now by Jan. 20, 2004 (17-a, 19-a, 21-a). Rule 4m, Federal Rules of Civil Procedure, appears to allow service of process to be completed on or by Mar. 11, 2004.

## JURISDICTION

On July 9, 2003, the Eleventh Circuit denied a petition for writ of mandamus intended to secure judicial reassignment to an impartial judge and/or forum below. A timely petition for rehearing en banc was denied on Sept. 17. On Dec. 10, Justice Kennedy entered an ordering extending the time for filing a petition up to and including Jan. 16, 2004. This Court has jurisdiction, pursuant to 28 U.S.C. §1651a.

## STATUTES, RULES AND CANONS INVOLVED

28 U.S.C. §1651(a) states: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

28 U.S.C. §144 provides: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

28 U.S.C. §455(a) states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

31 U.S.C. §3730(b) provides: "(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting. (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure....(3) The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure. (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall--(A) proceed with the action...or (B) notify the court that

it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action."

Rule 4(m), Federal Rules of Civil Procedure states: "If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to the defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period...."

Rule 60, Federal Rules of Civil Procedure, provides: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment...."

Canon 2A, Code of Conduct for United States Judges, 175 F.R.D. 363, 365, states: "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3A(4), Code of Conduct for United States Judges, 175 F.R.D. at 367, provides: "A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures

affecting the merits, of a pending or impending proceeding. A judge may, however, obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond...."

Canon 3(C), Code of Conduct for United States Judges, 175 F.R.D. at 368, includes: "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances, in which: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of evidentiary facts concerning the proceeding...."

Canon 4, Code of Conduct for United States Judges, 175 F.R.D. at 372, notes: "A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities, if in doing so, the judge does not cast reasonable doubt on the capacity to decide impartially any issue that may come before the judge: A. A judge may...participate in other activities concerning the law, the legal system, and the administration of justice....C. A judge may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice....A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice."

## STATEMENT OF THE CASE

Petitioner accepts the background provided by Judge Conway in her Order denying disqualification in this case (5-a). "The Plaintiffs filed this lawsuit *in camera* and *under seal* on December 17, 2002, pursuant to 31 U.S.C. §3729, *et seq.*, ('False Claims Act'), alleging the Defendants made false claims to the United States Department of Housing and Urban Development with respect to the acquisition, construction, improvement, rehabilitation, and/or marketing of the 216

Boca Club Apartments in the greater Washington Shores neighborhood in Orlando, Florida.

"This case was initially assigned to United States District Judge Patricia C. Fawsett. Judge Fawsett disqualified herself because she holds an interest that will require undertaking negotiations with the City of Orlando in the near future. This case was then reassigned to the undersigned judge. Pursuant to 28 U.S.C. §144, Plaintiff, Gabe Kaimowitz, now contends that the undersigned judge should recuse herself because he entertains significant doubts about her impartiality.

"Specifically, Kaimowitz identifies the following eight alleged sources of partiality. First and foremost, is that the undersigned previously disqualified herself from a case brought by Kaimowitz (p. 24-a). Second, is that after disqualifying herself, the undersigned judge has "never again" let Kaimowitz "appear in person or by phone in her courtroom," even though he represented himself or others in several cases before the undersigned judge subsequent to her recusal. Third, is that the undersigned judge has or once had numerous affiliations and contacts with adversaries of Kaimowitz, including Greater Orlando Area Legal Services, Inc. ("GOALS"), the law firm of Akerman, Senterfitt & Eidson, and attorney Tom Cardwell. Fourth, is that the undersigned judge, in another case pending before this Court, *United States ex rel Attorneys Against American Apartheid, by Gabe Kaimowitz, qui tam v. City of Orlando, Florida, and Glenda Hood, Individually*, Case No. 6:01-cv-705-Orl-22-KRS (M.D. Fla. 2001), recently issued an adverse ruling against Kaimowitz requiring him to show cause why the case should not be dismissed for lack of prosecution due to the non-filing of a Case Management Report.

"Fifth is that this Court has not dismissed or discharged the aforementioned Show Cause Order. Sixth, is that other district judges in the Middle District of Florida have 'stepped aside immediately' upon the filing of motions to recuse containing similar allegations of bias. Seventh, is that the

undersigned judge had and continues to enjoy support from the Defendant, the City of Orlando, in her views pertaining to the construction of a new Orlando courthouse. Eighth, is that the undersigned judge views the construction of a new courthouse in the Parramore neighborhood of Orlando, Fla., as an effort or attempt to revitalize that portion of the city."

Judge Conway then concluded: "After reviewing the aforementioned allegations, accepting all the properly pleaded facts therein as true, this Court finds that Kaimowitz has not satisfied the legal sufficiency test adopted by the Eleventh Circuit for purposes of analyzing questions of judicial recusal under §144. Specifically, the facts alleged in the affidavit even if true, would not convince a reasonable person that bias exists on the part of the undersigned judge.

"These findings are consistent with this Court's rulings in another False Claims Act lawsuit scheduled for trial in January of 2004, where the undersigned Kaimowitz's motions for recusal on the grounds that the allegations of bias contained therein did not reasonably call into question the impartiality of the undersigned judge. See *United States ex rel Attorneys Against American Apartheid, by Gabe Kaimowitz, qui tam v. City of Orlando, Florida, and Glenda Hood, Individually*, Case No. 6:01-cv-705-Orl-22-KRS, Docs. No. 124 and 147 (M.D. Fla. 2001). In addition, these findings are consistent with the result reached in *In re Gabe Kaimowitz*, Case No. 03-10166-B (11th Cir. Feb. 14, 2003)(hereafter by case number only), where the Eleventh Circuit denied Kaimowitz's Petition for a Writ of Mandamus to compel the undersigned judge to recuse herself from that case pursuant to 28 U.S.C. §455, based upon identical allegations of bias (p. 9-a)."

After Judge Conway denied recusal below in this litigation, the Eleventh Circuit refused to reconsider their denial of the petition in Case #03-10166-B, *supra* (p. 12-a). The panel noted: "In his motion for reconsideration, Kaimowitz presents new evidence in the form of a letter from the district judge to a building administrator, in which the

judge notes that Orlando Mayor Glenda Hood, a defendant in Kaimowitz's law suit, had arranged a meeting to discuss plans for the courthouse annex, which does not constitute pervasive bias. As we held in denying Kaimowitz's mandamus petition, recusal is not required merely because a party has demonstrated support of a judge. See *Schultz v. Newsweek*, 668 F.2d 911, 919 (6th Cir. 1982)(holding that recusal was not necessary where a party made complimentary statements about the judge, as it was not reasonable to believe that a judge would be influenced in favor of the party based on such support.) Accordingly, Kaimowitz's motion for reconsideration is **DENIED**," #03-10166-B, *supra*, (p. 16-a).

Petitioner had discovered that letter during inspection of documents for *United States ex rel Attorneys Against American Apartheid, by Gabe Kaimowitz, qui tam v. City of Orlando, Florida, and Glenda Hood, Individually*, Case No. 6:01-cv-705-Orl-22-KRS, *supra*, (hereafter by case number only). Based on that letter from Judge Conway, Petitioner made Florida Public Record Act requests to Orlando, and a federal Freedom of Information Act ("FOIA") inquiry to the federal General Services Administration ("GSA"). The former first revealed a mail log of some mail received or sent by former Orlando Mayor Glenda Hood. On March 28, 2003, in response, Orlando provided three additional documents (p. 25-a, at p. 26-a), including another copy of the letter from Judge Conway, *supra*, and an exchange of correspondence between Orlando Defendant Tom Kohler and Judge Elizabeth A. Kovachevich, then chief of the U.S. Court for the Middle District of Florida dated April 7 and 13, 1998 (pp. 29-a, et seq., and 31-a).

Kohler wrote to Judge Kovachevich concerning their discussion on April 1, 1998, about "a new U.S. Courthouse Annex for Orlando." He said she requested Orlando work with GSA to assure a "community-integrated facility design".... He wrote of her approval for inclusion of Orlando on a selection committee in an ad hoc advisory capacity. "We

assume this means we will have access to the submission materials as well as the decision meetings."

Mr. Kohler concluded: "We also appreciate Judge Fawsett's and your clear expressions of support for cooperation with the DDB ('Downtown Development Board' he served, as executive director for the City)...on April 2, 1998. Some architects have already contacted us regarding what is going on in downtown Orlando and with questions about the annex's possible impacts on adjacent neighborhoods (p. 29-a). We think that's a good sign. Please feel free to call on us for any assistance we can provide you in this project (p. 38-a)." Copies were sent to Orlando Mayor Hood, Orlando City Planning Director Rick Bernhardt, the DDB Board Chair, and Judge Fawsett, as well as to GSA personnel.

Judge Kovachevich replied: "Thank you for your letter dated April 7, 1998, concerning the new United States Courthouse Annex planned for Orlando. I am pleased to hear that you are looking forward to being involved in this project and are willing to assist in making this project a success. If all interested parties work together in a cooperative manner, I am sure that we will build a facility of which we can all be very proud...." Added to the recipients copied was the Clerk of the Court (p. 28-a).

Several weeks earlier, Judge Fawsett, aided by Judge Kovachevich, stepped aside almost immediately upon the filing of U.S.A. v. 3.864 Acres of Land, #6-98cv308 (M.D. Fla. 1998). The Docket Sheet revealed the local U.S. Attorney's Office filed the action to condemn land for the proposed U.S. Courthouse annex in the historically black Southwest Quarter of Orlando (p. 27-a). On Mar. 18, 1998, an Order signed by Judges Fawsett and Kovachevich transferred the case to Judge Joseph W. Hatchett, then chief of the Eleventh Circuit, "for reassignment of the case to a judicial officer whose duty station is not located within the jurisdiction of the Middle District of Florida." On Apr. 7, 1998, the Chief Justice of the United States signed an Order

approving "designation by Chief Judge Joseph W. Hatchett for services" of a judge outside of the district (p. 28-a).

In response to Petitioner's FOIA request, GSA first phoned him in April 2003 (p. 32-a) and outlined the extensive documentation it held about Defendant Orlando's involvement with the Orlando U.S. Courthouse Project ("Project"). Petitioner narrowed his request (id.) and he called GSA about the Project's status. GSA Project Manager Mike Fifty stated that Judge Conway was representing the judges on the Team.

On May 1, 2003, Judge Conway disqualified herself *sua sponte* "in the interests of justice" in the False Claims Act law suit then numbered #6:01-cv-705, *supra* (p. 14-a). On May 2, GSA sent out a selection of documents to Petitioner in response to the FOIA request (p. 32-a). Upon receipt, Petitioner began to file assortments he believed relevant to each False Claims Act suit and related appeals and petitions.

On May 20, Judge Conway denied Petitioner's motion to reconsider her refusal to step aside below (p. 15-a). She wrote: "This cause comes before the Court on Plaintiffs' Motion/Legal Authority for Judge Anne Conway to Reconsider her Refusal to Disqualify Herself (Doc. 14) filed March 21, 2003. There is no basis for the recusal of Judge Conway in this case. Based on the foregoing, it is ordered as follows: 1. Plaintiffs' Motion/Legal Authority for Judge Anne Conway to Reconsider her Refusal to Disqualify Herself (Doc. 14) is DENIED. DONE and ORDERED in Chambers, in Orlando, Florida, this 20th day of May, 2003."

Also on May 20, 2003, Judge Conway granted the Department a second extension, this time for five months to determine whether the United States would intervene (p. 16-a). She stated in personal handwriting that no further extensions would be allowed. In its application, the Department stated that the time was necessary to allow the U.S. Department of Housing and Urban Development

("HUD")[1] to investigate Petitioner's allegations, since their origins commenced in 1988[2], when Orlando first got approval and funding[3] from that federal agency for the 216-garden apartment, low-income complex in the historically black Southwest Quarter of the City.

In October 2003, the Department did seek a further extension of time to determine whether it would intervene, because of additional materials Petitioner had received from HUD in response to a FOIA request. He provided them to the Department. Judge Conway denied that request.[4] Without further investigation, the Department declined to intervene.

On July 9, 2003, the Eleventh Circuit denied this attorney's petition for writ of mandamus (p. 1-a). Denied reconsideration by Judge Conway of the 28 U.S.C. §144 request for recusal, Petitioner sought to have her removed and

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[1] --Mel Martinez had been HUD Secretary since January 2001. " Martinez used to practice law with former Orlando Mayor Bill Frederick. Martinez also is a close friend of Mayor Glenda Hood," D. Tracy and C. Lancaster, "Chairman's race luring Martinez," *Orlando Sentinel,* Jan. 3, 1997, p. C-5.

[2] --In 1984, Martinez was appointed by Frederick to the five-member Orlando Housing Authority for a five-year-term. "Mel Martinez, a little-known Florida official faces questions on federal housing policy but few major obstacles in confirmation hearings on his nomination....Martinez, 54, was named to head the federal housing agency after serving two years as chairman of the government of Orange County, Fla., which encompasses Orlando. He has experience as chairman of the Orlando Housing Authority and is likely to be questioned about how he has handled the housing situation in Orlando, which has one of the tightest markets for affordable housing in the nation. Florida Gov. Jeb Bush this year tapped him to head a statewide commission looking at growth management," J. Abrams, AP, *Yahoo! News*, Wednesday Jan. 17, 2001, http://dailynews.yahoo.com/h/ap/20010117/pl/martinez_housing_1.html.

[3] --The false claim allegedly was made in 1996-1997, when Defendants got additional federal funding to rehab property they had promised to protect.

[4] --The Mail Log of Mayor Glenda Hood revealed that on Jan. 2, 2001, Judge Conway had written to Mr. Martinez "seeking support for new design of federal courthouse" (p. 25-a). A copy of the letter was sent to Hood. On Dec. 13, 2000, Hood also sent a letter to Martinez in his capacity as Orange County chair regarding that agency's "school capacity policy's effect...infill, and downtown housing." (id).

the litigation reassigned to a judge outside of the U.S. Court for the Middle District of Florida, or at least to the judge below in the Tampa Division. He had been assigned to #6:01-cv-705, *supra*, after she recused herself in that matter.

On Sept. 17, 2003, the Eleventh Circuit refused to reconsider the petition and denied a Suggestion for a Rehearing En Banc, in *Re Gabe Kaimowitz*, #03-12900-R (hereafter by case number only) (p. 2-a). "Judges Anderson and Dubina did not participate in this decision (id.)."

For #03-12900-R, Petitioner attached documents including those provided in the Appendix, primarily with regard to participation by Judge Conway, Judge Kovachevich, Eleventh Circuit Judges Dubina and Anderson, in the Project, directly or indirectly with Orlando personnel. The discussions embraced overall Orlando planning for the Southwest Quarter.

By Aug. 23, 1999, the GSA had generated a Project Management Plan (p. 31-a). Among relevant statements contained therein are the following: "The complex will provide a secure environment (and) reinforce the urban planning of the City of Orlando....The new facility will be designed to fit within the context of the existing City of Orlando, address neighborhood issues and otherwise become a welcomed member of the community. (p. 33-a)."

On Nov. 8, 1999, Jill K. Shafer, then GSA Project Manager, provided the Plan to Judge Dubina (p. 33-a). Her Memo Transmittal to him concluded with an "Orlando Vision and Mission Statement: "....The courthouse shall make a positive contribution to the City's development, have a strong regional identity...and demonstrate the wise use of public resources." A similar letter was sent to Sheryl Loesch, Clerk of the Court, for the U.S. Court for the Middle District of Florida (p. 34-a). On that date, Ms. Shafer also wrote to the new Orlando planning director. "Your attendance and future participation with the Project Team is important.... Enclosed is a copy of the outcome of the two-day partnering event that followed the Kick-Off (p. 35-a)."

On Nov. 24, 1999, GSA wrote to Judge Anderson, then Eleventh Circuit chief: "(T)hank you for your efforts in coordinating and facilitating our meeting on Monday, November 22, 1999. I firmly believe that the support you, Judge Dubina,...and the Administrative Office of the United States Courts demonstrated, will be instrumental in our future progress and ultimately the success of the Orlando Courthouse project. We understand that the court's team, including Circuit Judge Dubina...will work closely together with our project team (p. 35-a)."

On Mar. 8, 2000, GSA sent to Judge Dubina and others a letter "on behalf of the entire Orlando Project Team," to thank them for their contributions "during the last several months." GSA noted that "we are quite pleased to have the Middle District back in the process" (p. 36-a). On Mar. 15, GSA noted Judge Conway's entry into the Project (p. 37-a). E-mails soon reflected Judge Conway's participation for selection of a "General Contractor for the construction phase of the new Orlando Annex project." (p. 38-a).

On May 8, 2000, Judge Conway, Judge Kovachevich, Clerk Sheryl Loesch, Eleventh Circuit architecture representatives and, for Orlando, Walter Hawkins, assistant to Mayor Hood, Ken Austin (DDB), Richard Unger, an assistant planner, as well as Sam Vennero, Orlando's parking expert, were among those listed as having attended a final blocking and stacking review meeting, (p. 39-a). Among the items considered were the following: "A review of the potential future site development has been performed. The task is to balance the court development with the impact for development of the city. Three key areas would be discussed during the meeting. 1. The site within the city. 2. The city's goals and plans. 3. Block/stacking options.

"**Site Issues**--1. The fabric of the downtown area was briefly reviewed including the areas adjacent to the site. 2. It is important to create site amenities since none currently exist. 3. The design team's goal is to build on the historic importance of Central Boulevard. The site is deemed a good

one due to its centrality to the city. **City Goals** 1. Parking continues to be an on-going question....(O)ther factors...may influence parking such as the future law school or development of neighborhoods to the west....

"4. There are also possibilities for a future Lymmo expansion (downtown bus loop). One option would be to expand east to the Washington Shores area.... This is currently included in the city's 2010 plan, although there is no indication of when this may actually be implemented. 5. Judge K expressed concern about noise from I-4 on the potential law school location...She noted that the...Court is not part of the law school site selection committee, however, they have offered to participate in an advisory role.

"6. A question was brought up concerning the future of the Parramore area. Ken Austin noted that it is being converted from industrial and single family zoning into residential and business zoning.... The city is currently looking for further development of the area.... 7. It was also questioned as to what the plans are for the block just west of the site. The city responded that there are no current plans for further development of this area. (p. 40-a).... 8. Any new development in the Parramore area will need parking.

"9. Ken Austin mentioned the streetscape improvements are planned for Central Boulevard. The city would provide the actual construction of the streetscape.... It was also noted that the Mission on the south side of Central has expressed a desire to move out of that location. They have spoken with the Police Department about buying the building, but nothing has progressed.

"10.... (T)he courts could rent 200-300 spaces with an additional 100-200 for public parking. It is also important to understand if the courts would commit to the city to lease a certain number of spaces when the building is complete....

"11. It was requested that the courts work on exact parking counts for 2004 or 2005 to include both employees and visitors. The city would then analyze and consider a request for additional parking. It is possible that a meeting

could occur within the next three weeks to discuss this issue further. 12. It was also requested that the city assist with streetscaping on the south side of Central Boulevard...." Another meeting was scheduled for June 19, 2000.

On May 26, 2000, GSA questioned several suggestions offered by the Clerk of the Court. Copies of the GSA communication were sent to Judges Conway, Kovachevich, and Fawsett (p. 44-a). Judge Conway and Kovachevich sent a joint letter to GSA on July 19 (p. 45-a). The letter critical of GSA's approach stated in part: "Is it too much to ask that the materials used, and the design and detailing of the Orlando building reflect a respect for traditional ideas?" On July 27, 2000, Judge Kovachevich notifed GSA that, among others, "Judge Conway, who has been our principal representative," would not be able to participate in a meeting in Boston. "However, I will be there and have asked Judge....Dubina, on behalf of the judicial council, to attend (p. 47-a)."

On Nov. 27, 2000, Judge Conway sent the letter Judges Dubina and Marcus considered in March 2003: "Glenda Hood, Mayor of the City of Orlando, is coordinating the meeting to discuss proposed modifications to the design of the Orlando Courthouse Annex.... We want a courthouse design that is sensitive to the neighborhood....Orlando has been selected as the site for the new Florida A&M law school.... What would be more welcoming to the A&M community than a public plaza inviting them across the street to the courthouse?... GSA should make the changes we have requested so that we can continue together to build a Courthouse Annex for Orlando that meets the needs of the Court and the interests of the community (pp. 48-a/49-a)."

On Dec. 1, 2000, GSA responded: "We will...be willing to look into the idea of a public plaza along West Washington Street.....We are certain that, in our continuing discussions with Tom Kohler of the Downtown Development Board, they would be willing to consider implementing their 'streetscape plan (p. 50-a).'"

By 2001, Judge Conway continued to express displeasure with GSA publicly. "'They're not interested in negotiating with us,'" Judge Conway said. 'We would like to sit down with someone from GSA who is interested in designing something for Orlando (p. 51-a).'"

A Mar. 2, 2001, GSA letter to Judge Conway expressed regret about "the Courts' decision to suspend participation on the project (p. 52-a)." But on June 29, the *Orlando Sentinel* reported: "(t)he long and contentious dispute over the Orlando's new federal courthouse will be settled with a new design....The General Services Administration, which has been loath to change its glass-dominated design, acknowledged Thursday that it has agreed to accommodate area judges...and other Orlando officials who hated the old proposal ....Orlando Mayor Glenda Hood said the courthouse is important to the development of Parramore, a long-distressed portion of downtown. 'The old design did not create an inviting connection to the FAMU law school and other parts of the neighborhood," she said. 'They all have to work together (p. 52-a).'"

Here, below Judge Conway continued to remain silent about her past and/or present involvement in the Project as she resumed issuing procedural orders before and after the Department declined to intervene on Nov. 10, 2003[5]. By Order of Nov. 12, Judge Conway unsealed the record (p. 18-

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[5] --By the fall of 2003, Mel Martinez had resigned as HUD Secretary, to run for the U. S. Senate seat after Bob Graham (D-Fla.) decided not to seek relection. See, e.g. R. A. Oppel, "Nominee Is Picked to Replace Departing HUD Secretary," *New York Times,* Dec. 13, 2003, p. 12. "Mel Martinez says he is 'very seriously' considering running for the U.S. Senate. He will continue his deliberations as part of the Orlando office of the Akerman Senterfitt law firm. Martinez will join Akerman on Jan. 5, as an 'of counsel' attorney," J. Kreuger, "Mel Martinez lands at Akerman Senterfitt, considering Senate Run" *Orlando Business Journal,* Dec. 23, 2002, at http:..www.bizjournals.com/orlando/stories/2003/12/22/daily5.html.f=et70

a). Pursuant to the False Claims Act, Judge Conway ordered that the complaint be served upon defendants. However, without apparent legal authority, she added that "contents of the Court's file shall be unsealed and the relators shall serve them upon the defendants only after service of the complaint. (emphasis is added)." (id.).

On Dec. 19, Judge Conway threatened to dismiss the action (p. 20-a). "As of the date of this Order no service returns have been filed. No later than December 29, 2003 Relator Gabe Kaimowitz shall serve the defendants and shall file the service returns with the Clerk. Failure to do so shall result in dismissal of this action for lack of prosecution without further notice." (p. 20-a). On Jan. 6, 2004, Judge Conway granted a motion to set aside that Dec. 19 Order, but only to give Petitioner until Jan. 20, 2004, to complete service and provide proof thereof (p. 22-a). Petitioner has moved to set aside that Order. Petitioner would appear to have 120 days from Nov. 12, to complete service of process. See 31 U.S.C. §3730(b)(3); Rule 4m, F.R.Civ.P. However, Petitioner is acting as directed on or before Judge Conway's deadline.

## REASONS FOR GRANTING THE WRIT

### I. ISSUANCE OF A WRIT OF MANDAMUS IS WARRANTED TO RESTORE THE APPEARANCE OF JUSTICE TO THIS FALSE CLAIMS ACTION.

If true, Petitioner's allegations of judicial ex parte communications with Defendant Orlando personnel to harmonize overall city planning goals with bench needs for a proposed federal courthouse warrant the invocation of this Court's jurisdiction to issue a writ of mandamus to restore the appearance of justice to False Claims Act litigation below. The pleading alleges that Orlando and a former assistant city planner made false claims to HUD, for funding to achieve their vision for improving the City's historically black Southwest Quarter where the proposed courthouse site is

located. Neither the Eleventh Circuit nor the district judge has explicitly denied the allegations of nexus between the ex parte talks about the Courthouse project and the merits here.

The district judge cryptically did step aside in a prior False Claims Act suit on May 1, 2003, "in the interests of justice" after GSA provided Petitioner with Project documents. Yet on May 20, that judge said there was no basis to reconsider her refusal to step aside here.

On July 9, 2003, the Eleventh Circuit without explanation refused to act on a petition for writ of mandamus to have her removed. But the two Eleventh Circuit judges known to have participated in those ex parte talks either directly or indirectly with Orlando planners stepped aside in the review of a suggestion for a rehearing en banc to hear issues arising from the petition for writ of mandamus (p. 2-a).

28 U.S.C. §455(a) requires a judge to step aside whenever he or she knows or should know a reasonable person familiar with all the circumstances would expect him or her to do so, even if no motion were made. A clear majority of this Court relied on that rule to approve judicial reassignment below, in an instance when knowledge obtained by a judge as a fiduciary for a party was revealed for the first time after dismissal of the underlying action, *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

The extent of ex parte communications between and among knowledgeable Orlando personnel, the trial judge and at least two Eleventh Circuit judges about city planning goals and fund raising needs would appear to dwarf comparable issues of concern in *Liljeberg.* Thus they may shock the conscience of one or more justices of this Court, *Cf. County of Sacramento v. Lewis,* 523 U.S. 833, 848, et seq. (1998). See, e.g., Justice A.M. Kennedy, "Judicial Ethics and the Rule of Law," 40 *St. Louis L. J.* 1067, 1069-70 (1996).

> The essential rule of judicial relations concerning lawyers and litigants is this: a judge must be fair and impartial. All sides to a controversy must be given a full and fair hearing. As a consequence, a judge may

not meet with an attorney or a party without the opposing attorney or parties present. The very nature of fair and open justice precludes either the fact or the appearance of a system in which essential communications occur without all sides present. We undermine respect for the judiciary if we allow it to be charged with adopting secret and understandings or private agreements.

Kennedy, J., "Judicial Ethics...." 40 *St. Louis L.J.*, *supra* at 1070.

Justice Kennedy then considered several exceptions not relevant here. On point, he concluded:

> Confidence in the entire system is eroded when the public sees a judge violating simple rules, for instance by communicating with only one party or hearing a case where there is a conflict of interest. Furthermore, all too often the appearance becomes the reality. If we do not maintain the appearance of neutrality, small deviations become the accepted norm, and as a consequence undermine the integrity of the judiciary.

Id.

A trial judge has a critical role in this type of litigation. This Court has stressed the importance of that role in a False Claims Act action involving allegations of wrongdoing by a municipality:

> The question in such cases is whether the local taxpayer should make up for an undeserved benefit, or the federal taxpayer be permanently out of pocket, a question that can be answered in any given case, not by an opportunistic qui tam relator, but by a combination of the judge's discretion and the Government's power to intervene and dismiss or settle an action, see §3730(c)(2).

*Cook County v. United States ex rel Chandler,* 123 S.Ct. 1239, 1247 (Mar. 10, 2003).

Certainly at this early juncture, when this action is in the pleading stage, no harm would come to any party or to the judiciary by the granting of a writ to require judicial reassignment, in these exceptional circumstances. Denial surely will cast an unnecessary pall below in the future.

## II. THIS COURT AND A MAJORITY OF CIRCUITS LONG HAVE REGARDED MANDAMUS AS AN APPROPRIATE REMEDY TO COMPEL DISQUALIFICATION OF A FEDERAL JUDGE WHEN SPECIAL CIRCUMSTANCES REQUIRE SUCH ACTION.

This Court long has recognized that it may be necessary or appropriate in aid of its jurisdiction to issue a writ of mandamus to compel disqualification of a federal judge, *Ex parte American Steel Barrel Co.*, 230 U.S. 35 (1913). The First, Second, Third, Seventh, Eighth, Ninth, Tenth and the D.C. Circuits likewise hold that a writ can be used for that purpose. See, e.g., *Pontarelli v. Stone,* 978 F.2d 773 (1st Cir. 1992); *Re Nagy,* 89 F3d 115 (2d Cir. 1996); *Moody v. Simmons,* 858 F.2d 137 (3rd Cir. 1988), cert den. 103 L.Ed 2d 835; *Hook v. McDade*, 89 F3d 350 (7th Cir. 1996), stay den 136 L.Ed.2d 298; *Liddell v. Bd. of Education,* 677 F.2d 626, (8th Cir. 1982), cert den. 459 U.S. 877; Re *Cement Antitrust Litigation*, 673 F2d. 1020 (9th Cir. 1982); *United States v. Ritter*, 273 F.2d 30 (10th Cir. 1959), cert den 362 U.S. 950; *Hurd v. Letts*, 152 F.2d 121 (D.C. Cir. 1945).

The Sixth Circuit appears to suggest that the use of such writ may be appropriate if a judge refuses recusal sought on the basis of 28 U.S.C. § 144, but not on the basis of 28 U.S.C. § 455. See *Williams v. Kent*, 216 F.2d 342 (6th Cir. 1954); *Albert v. United States District Court,* 283 F. 2d 61 (6th Cir. 1960); and *Cleveland v. Krupansky,* 619 F.2d 576 (6th Cir. 1980). The Fourth Circuit would appear to deny writs sought to disqualify judges, *Cf. General Tire & Rubber Co. v. Watkins,* 331 F.2d 192 (4th Cir. 1964).

Neither the Fifth nor the Eleventh Circuits seems to have addressed the issue directly since the latter was spun off from the former in 1981. However, in *Diversified Numismatics v. Orlando*, 949 F.2d 382, 384 (11th Cir. 1991), a panel criticized the City's private law firm for its suggestion that application for the writ was the way to seek disqualification of a judge who refused to step aside. The Eleventh Circuit made clear its preference for raising such issues on appeal to avoid piecemeal proceedings.

Perhaps that it is why a two-member panel rejected without explanation the application made below in this case and the Circuit en banc then refused, also without reason, to review that denial of the writ of mandamus. However, again note that the two Circuit judges known to have participated in the ex parte communications with Orlando personnel about the Project specifically did not participate in that en banc determination. No explanation was given for those actions.

Should this Court likewise decline to address the issue here, in the belief that it is premature, it surely will come back to haunt the parties and affect proceedings in this and the other False Claims Act suit #6:01-cv-705, discussed *supra.* The described ex parte communications have contaminated *Kaimowitz, qui tam, v. Orlando*, #95-204-Civ-Orl (M.D. Fla. 1994) (sic) as well. Judge Fawsett, who disqualified herself in each of those cases, for the same reason she gave below here, and Judge John Antoon II, her successor in that False Claims Act litigation, also have been involved directly with Orlando personnel in the Project.

The writ of mandamus should issue here. Petitioner has set out with particularity why the relief sought is not available in any other court. The requisite of exceptional circumstances is met, especially since the described ex parte communications about the Project appear to be continuing. DDB's Joyce Sellen, the City's Project manager, is involved. GSA in April 2003 reported Judge Conway's indefinite involvement. Clearly Judge Conway has acquired and apparently continues to acquire knowledge about Orlando's

past and present plans for the historically black Southwest Quarter which have bearing on the litigation below.

Under the described circumstances, this Court would be derogating rather than enhancing the appearance of justice if it waited for a judgment before it would consider the impact of the described ex parte communications on this action.

> We conclude that in determining whether a judgment should be vacated for a violation of 455(a), it is appropriate to consider the risk of injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that to perform its high function in the best way "justice must satisfy the appearance of justice."

*Liljeberg*, 486 U.S. *supra* at 863-864 (1988).

## III. CIRCUITS RECENTLY PRESENTED WITH EX PARTE COMMUNICATION ISSUES ARE ACTING TO REMOVE THE DISTRICT JUDGES WHO WERE INVOLVED IN THEM. THE WRONG MESSAGE ABOUT THE APPEARANCE OF JUSTICE WILL BE SENT IF THE PETITION IS DENIED WITHOUT EXPLANATION AS IT HAS BEEN BELOW.

Until recently, federal courts rarely seem to have granted relief when allegations were made of contamination of litigation by ex parte communications. For instance, the Fourth Circuit excused two ex parte contacts which did not appear to involve substantive issues during a 52 day trial, *Aiken County v. Bsp Div. of Envirotech Corp.*, 866 F.2d 661, 679 (4th Cir. 1989). In *Levitt v. University of Texas at El Paso*, 847 F.2d 221 (5th Cir. 1988), a panel dismissed a pro se litigant's claim of ex parte communications which she was unable to substantiate. Neither circumstance is relevant here.

But the Seventh Circuit removed a judge who relied on ex parte talks with experts without full disclosure of their substance, *In re James R. Edgar*, 93 F.3d 257 (7th Cir. 1996).

In *U.S. v. Craven*, 239 F.3d 91 (lst Cir. 2001), an appellant's sentence was vacated, because a district judge spoke ex parte with an expert about a substantive sentencing matter. The appeals court lauded the district judge but under the circumstances could not permit the tainted departure to stand. The court remanded with instruction to have another judge impose sentence, *Craven*, 239 F.3d, *supra*, at 103.

Petitioner does not discount the worthy purpose of the Project, or the need for participation of Judges Conway, Dubina and Anderson, among others who have worked directly and indirectly with Orlando officials to bend GSA to their will and to assist in planning to improve the surrounding Southwest Quarter. But for this and the other False Claims Act suits mentioned here, the district judges surely knew that litigation touching on courthouse issues could and should be sent to a judge outside of the district. See, *United States v. 3.864 Acres,* #98-308-Civ-Orl-19, *supra*, (p. 27-a). Certainly Judge Fawsett, now chief of the U.S. Court for the Middle District, knew of that option when she recused herself from each of the three False Claims Act cases in 2002/2003. She and Judge Conway clearly err, when they fail to see that such alternative judicial assignment is necessary in this litigation, to protect the appearance of justice, while the judges continue to work on getting a new proposed Orlando courthouse.

## CONCLUSION

This Court should exercise its jurisdiction to issue a writ of mandamus to the U.S. Court for the Middle District of Florida, to have this case reassigned away from the present district judge for this False Claims Act litigation. Further this Court should provide such other relief as is necessary to assure the appearance of justice in this case.

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Gainesville, FL 32614
(352) 375-2670

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SEALED
BY COURT
ORDER

No. 03-12900-R

FILED
U.S. COURT
OF APPEALS
ELEVENTH
CIRCUIT
JUL 9 2003
THOMAS H.
KAHN, CLERK

IN RE:

GABE KAIMOWITZ,

Petitioner

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

BEFORE: TJOFLAT and BIRCH, Circuit Judges.

BY THE COURT:

The petition for writ of mandamus is DENIED.

The request to consolidate this petition with No. 03-12523 is DENIED AS MOOT.

IN THE UNITED STATES COURT OF APPEALS

SEALED

FOR THE ELEVENTH CIRCUIT

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No. 03-12900-R

FILED
U.S. COURT
OF APPEALS
ELEVENTH
CIRCUIT
SEP 17 2003
THOMAS K. KAHN
CLERK

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IN RE:

GABE KAIMOWITZ,

Petitioner.

---

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

Before: CHIEF JUDGE EDMONSON, and JUDGES TJOFLAT, BIRCH, BLACK, CARNES, BARKETT, HULL, MARCUS, and WILSON, Circuit Judges.*
PER CURIAM:

The Petition for Rehearing is DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

*Gerald Bard Tjoflat*

UNITED STATES CIRCUIT JUDGE

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*Judges Anderson and Dubina did not participate in this decision.

SEALED BY COURT ORDER

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED *cm*
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UNITED STATES OF AMERICA,
ex rel, GABE KAIMOWITZ, an attorney
qui tam, pro se,
Plaintiff,
vs. CASE NO. 6:02-CV-1509-ORL-19JGG

ROBERT ANSLEY, as agent for
ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION;
BOCA CLUB APARTMENTS, formally
incorporated perhaps with other properties, as
ANVIL-RICHARD ALLEN GARDENS, INC.;
formerly known as ONIC-HOLDEN GARDENS, INC.,
formerly known as ONIC-BOCA CLUB
APARTMENTS, INC., and individually, and
ORLANDO, FLORIDA, a municipal corporation, either
directly or also by Robert Ansley, as its agent,

Defendants.

---

**ORDER**

The undersigned judge having been apprised that an investment in which she holds an interest will undertake negotiations with the City of Orlando in the near future, I hereby recuse myself from further proceedings in this case and direct that the case be reassigned to another District Court Judge.

DONE AND ORDERED at Orlando, Florida this 31st day of December, 2002.

*Patricia C. Fawsett*
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 MAR 10 AM 8:44
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA *initials*,
ORLANDO, FLORIDA

**UNITED STATES OF AMERICA, ex rel, GABE KAIMOWITZ, an attorney qui tam, pro se,**

**Plaintiffs,**

**vs.**

**CASE NO. 6:02-CV-1509-ORL-22JGG**
**UNDER SEAL**

**ROBERT ANSLEY, as agent for ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION; BOCA CLUB APARTMENTS, formally incorporated perhaps with other properties, as ANVIL-RICHARD ALLEN GARDENS, INC.; formerly known as ONIC-HOLDEN GARDENS, INC., formerly known as ONIC-BOCA CLUB APARTMENTS, INC., and individually, and ORLANDO, FLORIDA, a municipal corporation, either directly or also by Robert Ansley, as its agent,**

**Defendants.**

---

**ORDER**

## I. INTRODUCTION

Plaintiff, Gabe Kaimowitz, counsel for Plaintiffs, United States of America ex rel., Gabe Kaimowitz, an attorney qui tam, pro se ("Plaintiffs"), has filed a Motion to Recuse the undersigned judge pursuant to 28 U.S.C. § 144 (Doc. No. 8, filed January 15, 2003), along with a Memorandum of Law in Support of Recusal (Doc. No. 8, filed January 15, 2003), and an Affidavit in Support of Recusal (Doc. No. 10, filed January 15, 2003.) Because this case is currently under seal, the Defendants have not been served. Having reviewed the motion, memorandum,

and affidavit, this Court **DENIES** Plaintiffs' Motion/Memorandum of Law for Recusal (Doc. No. 8).

## II. BACKGROUND

The Plaintiffs filed this lawsuit *in camera* and *under seal* on December 17, 2002, pursuant to 31 U.S.C. §3729, *et seq.*, ("False Claims Act"), alleging the Defendants made false claims to the United States Department of Housing and Urban Development with respect to the acquisition, construction, improvement, rehabilitation, and/or marketing of the 216 Boca Club Apartments in the greater Washington Shores neighbor-hood in Orlando, Florida. [1]This case was initially assigned to United States District Judge Patricia C. Fawsett. Judge Fawsett disqualified herself because she holds an interest that will require undertaking negotiations with the City of Orlando in the near future.[2]

This case was then reassigned to the undersigned judge. Pursuant to 28 U.S.C. §144, Plaintiff, Gabe Kaimowitz, now contends that the undersigned judge should recuse herself because he entertains significant doubts about her impartiality.[3] Specifically, Kaimowitz identifies the following eight alleged sources of partiality.[4]

First and foremost, is that the undersigned previously disqualified herself from a case brought by Kaimowitz.[5] Second, is that after disqualifying herself, the undersigned judge has "never again" let Kaimowitz "appear in person or by phone in her courtroom," even though he represented himself or others in several cases before the undersigned judge subsequent to her recusal.[6]

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[1] *See generally* Doc. No. 6.
[2] Doc. No. 6.
[3] *See generally* Docs. No. 8 and 10.
[4] *See generally* Docs. No. 8 and 10.
[5] See Affidavit in Support of Motion for Recusal of Judge Anne C. Conway (Doc. No. 10), ¶¶ 3-4, & 29, at pp. 1-2, & 7.
[6] Id., ¶¶ 5-7, at p. 2.

Third, is that the undersigned judge has or once had numerous affiliations and contacts with adversaries of Kaimowitz, including Greater Orlando Area Legal Services, Inc. ("GOALS"), the law firm of Akerman, Senterfitt & Eidson, and attorney Tom Cardwell.[7] Fourth, is that the undersigned judge, in another case pending before this Court, *United States ex rel Attorneys Against American Apartheid, by Gabe Kaimowitz, qui tam v. City of Orlando, Florida, and Glenda Hood, Individually*, Case No. 6:01-cv-705-Orl-22-KRS (M.D. Fla. 2001), recently issued an adverse ruling against Kaimowitz requiring him to show cause why the case should not be dismissed for lack of prosecution due to the non-filing of a Case Management Report.[8] Fifth is that this Court has not dismissed or discharged the aforementioned Show Cause Order.[9] Sixth, is that other district judges in the Middle District of Florida have "stepped aside immediately" upon the filing of motions to recuse containing similar allegations of bias.[10] Seventh, is that the undersigned judge had and continues to enjoy support from the Defendant, the City of Orlando, in her views pertaining to the construction of a new Orlando courthouse.[11] Eighth, is that the undersigned judge views the construction of a new courthouse in the Parramore

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[7] --*See id.* ¶¶8-28, at pp.3-6.

[8] --*See id.* ¶35 at p. 8.

[9] --*See id.* ¶36 at p. 8. Kaimowitz incessantly complains about this Court's unwillingness to discharge the September 25, 2002 Show Cause Order (Doc. No. 111) entered in case no. 6:01-cv-705-Orl-22KRS. However, Kaimowitz cites to no authority indicating that an order to show cause must be discharged after a response has been filed. In addition, this Court notes that Kaimowitz's Response to the Order to Show Cause (Doc. No. 1134, filed September 30, 2002), entered in case no. 6:01-cv-705-Orl-22KRS was inadequate. Thus, the Show Cause Order will not be discharged from the record.

[10] *See id.*, ¶¶37-39, at pp. 8-9.

[11] *See id.*, ¶40, at pp. 9-10.

neighborhood of Orlando, Florida as an effort or attempt to revitalize that portion of the city.[12]

This Court will now consider these allegations.

## III. LEGAL ANALYSIS

### A. GENERALLY

"To warrant recusal under §144, the moving party must allege facts that would convince a reasonable person that bias actually exists." Christo v. Padgett, 223 F.3d 1324, 1333 (11th Cir. 2000)(internal citations omitted). Under §144, the question for the presiding judge is not whether the facts alleged are true. *See id.* Rather, the issue is whether the affidavit is legally sufficient. *See id., see also Phillips v. Joint Legislative Comm. on Performance & Expenditure Rev.*, 637 F.2d 1014, 1019 (5th Cir. Feb. 1981)[13] ("If an affidavit filed under section 144 is timely and technically correct, its factual allegations must be taken as true for purposes of recusal. The judge may pass on the legal sufficiency of the affidavit, but he may not pass on the truth of the matters alleged.") Facts alleged in a §144 affidavit are legally sufficient to require recusal when:

1. The facts are material and stated with particularity;

2. The facts are such that, if true[,] they would convince a reasonable person that a bias exists;

3. The facts show that the bias is personal, as opposed to judicial in nature. *United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert. denied, Board of Trustees of Alabama State University v. Auburn University*, 487 U.S. 1210 (1988).

### B. DISCUSSION

After reviewing the aforementioned allegations, accepting all the properly pleaded facts therein as true,

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[12] *See id.*,¶40-41, at pp. 9-11.

[13] The decisions of the Fifth Circuit issued prior to October 1, 1981, are binding precedent on this court unless and until they are overruled by the Eleventh Circuit. See *Bonner v. City of Prichard*, 661 F.2d 1206, 1207(11th Cir. 1981)(en banc).

this Court finds that Kaimowitz has not satisfied the legal sufficiency test adopted by the Eleventh Circuit for purposes of analyzing questions of judicial recusal under §144. Specifically, the facts alleged in the affidavit even if true, would not convince a reasonable person that bias exists on the part of the undersigned judge.

These findings are consistent with this Court's rulings in another False Claims Act lawsuit scheduled for trial in January of 2004, where the undersigned Kaimowitz's motions for recusal on the grounds that the allegations of bias contained therein did not reasonably call into question the impartiality of the undersigned judge. See *United States ex rel Attorneys Against American Apartheid, by Gabe Kaimowitz, qui tam v. City of Orlando, Florida, and Glenda Hood, Individually*, Case No. 6:01-cv-705-Orl-22-KRS, Docs. No. 124 and 147 (M.D. Fla. 2001). In addition, these findings are consistent with the result reached in *In re Gabe Kaimowitz*, Case No. 03-10166-B (11th Cir. Feb. 14, 2003), where the Eleventh Circuit denied Kaimowitz's Petition for a Writ of Mandamus to compel the undersigned judge to recuse herself from that case pursuant to 28 U.S.C. §455, based upon identical allegations of bias.

## IV. CONCLUSION

Based on the foregoing, it is **ORDERED** that Plaintiffs', United States of America, ex rel. Gabe Kaimowitz, an attorney qui tam, pro se, January 15, 2003, Motion/Memorandum of Law for Recusal of the undersigned judge (Doc. No. 8), is **DENIED**.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida this *7th* day of March 2003.

Copies furnished to:
All Counsel of Record
Unrepresented Parties

*Anne C. Conway*
ANNE C. CONWAY
United States District Judge

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

FILED
U.S.
COURT OF
APPEALS
FEB. 14, 2003
THOMAS K.KAHN
CLERK

No. 03-10166-B

ELEVENTH CIRCUIT

Dist.Ct.Docket No. 01-00705-CV-ORL-22

IN RE: GABE KAIMOWITZ,
Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Florida

A TRUE COPY
ATTESTED
CLERK, U.S. COURT
OF APPEALS
ELEVENTH
CIRCUIT
By: *Gladys H. Briggs*
Deputy Clerk, Atlanta, GA

**BEFORE**: DUBINA and MARCUS,
Circuit Judges

**BY THE COURT**:

Gabe Kaimowitz petitions this Court for a writ of mandamus relating to his civil action under the False Claims Act, 31 U.S.C. §3729. He seeks to compel the district court judge to recuse herself based on several allegations of bias, or alternatively, for this Court to transfer his case to another division of the Middle District of Florida.

The question of disqualification of a trial judge is reviewable on mandamus, but the writ will issue only in drastic situations, when no other adequate means are

available to remedy a clear usurpation of power or abuse of discretion. In re Lopez-Lukis, 113 F.3d 1187, 1187-88 (11th Cir. 1997), Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997). The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. Lopez-Lukis, 113 F.3d at 1188.

A judge must disqualify herself "in any proceeding in which [her] impartiality might reasonably be questioned." 28 U.S.C. §455(a). Disqualification is required only when the alleged bias is personal in nature, meaning that it stems from an extra-judicial source. Liteky v. United States, 510 U.S. 540, 553, 114 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994); Loranger v. Stierheim, 10 F.3d 776, 7809 (11th Cir. 1994). Generally a judge's rulings in a case are not valid grounds for recusal. Liteky, 510 U.S. at 555; Loranger, 10 F.3d at 780. In rare cases, recusal may be required when "such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party." Loranger, 10 F.3d at 780. Mere friction between court and counsel is not enough to demonstrate pervasive bias.Thomas v. Tenneco Packaging Co., 293 F.3d 1306, 1329 (11th Cir. 2002) (quotations omitted).

Kaimowitz has not established extraordinary circumstances warranting mandamus relief. Much of his allegations stem from adverse rulings Judge Conway has made (or that he anticipates she will make) in this case and in previous cases in which he was involved. The mere fact that Judge Conway previously has ruled adversely to Kaimowitz, does not, by itself, establish pervasive bias. Furthermore, although Kaimowitz asserts that Judge Conway formally was associated with an organization that became adverse to him when it fired him, he has not shown that she was involved in the organization at the time, and, in fact, Judge Conway asserted to the contrary in her order denying the motion

for recusal. See, e.g., Huff v. Standard Life. Ins. Co., 683 F.2d 1363, 1369-70 (11th Cir. 1982)(holding that a judge's prior association with a firm that is adverse to a party does not show pervasive bias. Recusal is not required even when a party has made complimentary statements about the judge, as it is not reasonable to believe that a judge would be influenced in favor of the party based on such support. Schultz v. Newsweek, Inc., 668 F.2d 911, 919 (6th Cir. 1982).

With regard to Kaimowitz's request that we transfer the case to another division of the Middle District of Florida, he has an adequate alternative remedy in that he can move for such relief in the district court, pursuant to 28 U.S.C. §1404(b). For all of the above reasons, Kaimowitz's mandamus petition is **DENIED**.

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT
OF APPEALS
ELEVENTH CIRCUIT
THOMAS K. KAHN
CLERK
Atlanta, GA

No. 03-10166-B

Dist.Ct.Docket No. 01-00705-CV-ORL-22

IN RE:

GABE KAIMOWITZ,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Florida

**BEFORE**: DUBINA and MARCUS, Circuit Judges.
**BY THE COURT**:

Gabe Kaimowitz has filed an "Emergency Motion Based on New Evidence Obtained from an Extra Judicial Source to Stay or Set Aside Mandate on Petition for Writ of Mandamus," which we construe as a motion for reconsideration of our February 14, 2003 order denying his petition for a writ of mandamus. In his mandamus petition, Kaimowitz sought to compel the district court judge to recuse herself based on several allegations of bias, or alternatively, for this Court to transfer his case to another division of the Middle District of Florida. In his motion for reconsideration, Kaimowitz presents new evidence in the form of a letter from the district court judge to a building administrator, in which the judge notes

that Orlando Mayor Glenda Hood, a defendant in Kaimowitz's law suit, had arranged a meeting to discuss plans for the courthouse annex, which does not constitute pervasive bias. As we held in denying Kaimowitz's mandamus petition, recusal is not required merely because a party has demonstrated support of a judge. See *Schultz v. Newsweek*, 668 F.2d 911, 919 (6th Cir. 1982)(holding that recusal was not necessary where a party made complimentary statements about the judge, as it was not reasonable to believe that a judge would be influenced in favor of that party based on such support.) Accordingly, Kaimowitz's motion for reconsideration is **DENIED**.

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 MAY 1 PM 4:34
CLERK, U.S.
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA
*initials* ORLANDO,
FLORIDA

**UNITED STATES OF AMERICA, ex rel, ATTORNEYS AGAINST AMERICAN APARTHEID, by Gabe Kaimowitz, qui tam,**
**Plaintiffs,**

**vs.**

**Case No. 6:01-cv-705-Orl-22KRS**

**CITY OF ORLANDO, FL and GLENDA HOOD, etc., et al.,**
**Defendants.**

---

**ORDER**

Upon the Court's own motion the undersigned judge determines the interests of justice would be served by recusal from this case. See 28 U.S.C. § 455(a).

The clerk is directed to reassign this case to another district judge.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida this *lst* day of May 2003.

*Anne C.*

*Conway*

ANNE C. CONWAY
United States Dstrict Judge

Copies furnished to:
Counsel of Record
Unrepresented Party
Division Manager

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 MAY 20 PM 3:39
*CM* CLERK, U.S.
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA
ORLANDO, FLORIDA

**UNITED STATES OF AMERICA, ex rel, Gabe Kaimowitz, etc.,**

**Plaintiffs,**

**UNDER SEAL**

**-vs-** **Case No. 6:02-cv-1509-Orl-22KRS**

**ROBERT ANSLEY, et al.,**

**Defendants.**

---

**ORDER**

This cause comes before the Court on Plaintiffs' Motion/Legal Authority for Judge Anne Conway to Reconsider her Refusal to Disqualify Herself (Doc. 14) filed March 21, 2003. There is no basis for the recusal of Judge Conway in this case.

Based on the foregoing, it is ordered as follows:

1. Plaintiffs' Motion/Legal Authority for Judge Anne Conway to Reconsider her Refusal to Disqualify Herself (Doc. 14) is DENIED.

DONE and ORDERED in Chambers, in Orlando, Florida, this 20th day of May, 2003.

*Anne C. Conway*
ANNE C. CONWAY
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 MAY 20 PM 3:39
CMCLERK, U.S.
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA,
ORLANDO, FLORIDA

UNITED STATES OF AMERICA, ex rel, GABE KAIMOWITZ, an attorney qui tam, pro se,

Plaintiff

vs.

NO. 6:02-CV-1509-ORL-22JGG

**FILED IN CAMERA AND UNDER SEAL**

ROBERT ANSLEY, as agent for (1) ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION; (2) BOCA CLUB APARTMENTS, formally incorporated perhaps with other properties, as ANVIL-RICHARD ALLEN GARDENS, INC.; formerly known as ONIC-HOLDEN GARDENS, INC., formerly known as ONIC-BOCA CLUB APARTMENTS, INC., (3) and individually, and (4) ORLANDO, FLORIDA, a municipal corporation, either directly or also by Robert Ansley, as its agent,

Defendants.

---

**ORDER**

Upon consideration of the United States second motion for extension of time to make an election to intervene, pursuant to the False Claims Act, 31 U.S.C. §3730(b)(3), for a five (5) month extension of time, from May 19, 2003, to October 20, 2003, in which to determine whether to intervene in the above- captioned action, and during which the complaint and other filings shall remain under seal, it is hereby

ORDERED that the United States shall have until and including October 20, 2003, to intervene in the above-captioned action or to notify the Court that it declines to do so, and it is hereby further

ORDERED that the complaint and other filings shall remain under seal until and including October 20, 2003, upon order of this Court, unless the United States requests that the seal be lifted prior to that date. *No further extensions will be granted.*

Dated: *May 20, 2003*

*Anne C. Conway*
United States District Judge

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 NOV 12 PM 3:07
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA, ex rel. GABE KAIMOWITZ, an attorney qui tam, pro se,
Plaintiff,

vs.

NO. 6:02-CV-1509-ORL-22JGG

FILED IN CAMERA AND UNDER SEAL

ROBERT ANSLEY, as agent for

(1) ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION; (2) BOCA CLUB APARTMENTS, formally incorporated perhaps with other properties, as ANVIL-RICHARD ALLEN GARDENS, INC.; formerly known as ONIC-HOLDEN GARDENS, INC., formerly known as ONIC-BOCA CLUB APARTMENTS, INC., (3) and individually, and (4) ORLANDO, FLORIDA, a municipal corporation, either directly or also by Robert Ansley, as its agent,
Defendants.

---

**ORDER**

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. §3730(b)(4)(B), this Court rules as follows:

IT IS ORDERED that, 1. The complaint be unsealed and served upon the defendants by the relators;

2. All contents of the Court's file shall be unsealed and the relators shall serve them upon the defendants only after service of the complaint;

3. The seal be listed as to all other matters occurring in this action after the date of this order;

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time;

5. All orders of this Court shall be sent to the United States; and that

6. Should the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting its approval.

So ORDERED, this *12th* day of *November*, 2003.

*Anne C. Conway*
United States District Judge

Copies to:

United States Attorney
201 Federal Building
80 North Hughey Avenue
Orlando, Florida 32801

Gabe Kaimowitz, Esquire
Florida Bar No. 0633836
P.O. Box 140119
Gainesville, Florida 32614

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
03 DEC 19 AM 10:02
CLERK, U.S
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA, *CM*
ORLANDO, FLORIDA

**UNITED STATES OF AMERICA, ex rel, GABE KAIMOWITZ, qui tam,.**

**Plaintiffs,**

**vs.** **Case No. 6:02-CV-1509-ORL-22JGG**

**ROBERT ANSLEY, et al.,**
**Defendants.**

---

**ORDER**

This cause comes before the Court on Plaintiffs' Motion/Legal Authority to Set Aside/Modify or Clarify an Order of this Court (Doc. 35), filed November 24, 2003, and upon a review of the file,

Based on the foregoing, it is ordered as follows:

1. Plaintiffs' Motion/Legal Authority to Set Aside/Modify or Clarify an Order of this Court (Doc. 35) is DENIED. 2. On November 12, 2003, this Court directed the file be unsealed and directed the relator to serve the defendants (Doc. 32). As of the date of this Order no service returns have been filed. No later than **December 29, 2003**[1] Relator Gabe Kaimowitz shall serve the defendants and shall file the service returns with the Clerk. Failure to do so shall result in dismissal

---

[1] --Before that date, Relator moved to set aside this Order, and filed Waivers of Service of Summons signed for Orlando by Martha Lee Lombardy, an assistant City Attorney, on Dec. 17, 2003, with response due by Jan. 26, 2004, and for Robert C. Ansley, etc., by him on Dec. 18, 2003, with response due by February 2, 2004. Relator concedes that Defendant Orlando must be formally served within 120 days from Nov. 12, 2003. A City is not permitted to waive service.

of this action for lack of prosecution without further notice.

**DONE** and **ORDERED** in Chambers in Orlando, Florida this 19th day of December, 2003.

*Anne C. Conway*
ANNE C. CONWAY
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

FILED
04 JAN-6 PM 4:06
CLERK, U.S. *CM*
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA, initials
ORLANDO, FLORIDA

**UNITED STATES OF AMERICA, ex rel, GABE KAIMOWITZ, qui tam, Plaintiffs,**

**vs.** **Case No. 6:02-CV-1509-ORL-22JGG**

**ROBERT ANSLEY, et al,**
**Defendants.**

**ORDER**

This cause comes before the Court on Plaintiff's, United States of America, ex rel Gabe Kaimowitz, qui tam, Emergency Motion/Legal Authority to Modify an Order of Dec. 19, 2003 (Doc. No. 39).

Having reviewed the motion and memoranda, it is **ORDERED** that the Plaintiff's, United States of America, ex rel Gabe Kaimowitz, qui tam, December 29, 2003 Emergency Motion/Legal Authority to Modify an Order of Dec. 19, 2003 (Doc. No. 39) is **GRANTED**. The Plaintiff shall have until Tuesday, January 20, 2004 to comply with this Court's December 19, 2003 Order (Doc. No. 37). In reaching this conclusion, the Court notes that the undersigned (sic) has had since November 12, 2003 to serve the Defendants in this matter. See Doc. No. 32 ("All contents of the Court's file shall be unsealed and the relator[] shall serve them upon the defendants only after service of the complaint"). Thus, contrary to what the Plaintiff professes in his Motion (Doc. No. 39), the Court's December 19, 2003 Order (Doc. No. 37), requiring service by Monday, December 29, 2003, was not an "ambush" on the Plaintiff's cause.

DONE and ORDERED in Chambers, in Orlando, Florida this *6th* day of January, 2004.

Copies furnished to:
Counsel of Record
Unrepresented Parties

*Anne C. Conway*
JUDGE ANNE C. CONWAY
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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93 SEP 27 AM 11:46
CLERK, U.S.
DISTRICT COURT
MIDDLE DISTRICT
OF FLORIDA,
ORLANDO, FL

GREATER WASHINGTON SHORES HOMEOWNERS ASSOCIATION, et al.,

Plaintiffs

-vs-

CASE NO. 88-962-CIV-ORL-22

CITY OF ORLANDO,

Defendant.

_____/

ORDER

As a result of Plaintiffs' counsel's[1] comments and the position asserted by him at the hearing before this Court on September 27, 1993, I have determined that my impartiality toward counsel might reasonably be questioned if I were to continue presiding over this case. Accordingly, I hereby recuse myself pursuant to 28 U.S.C. § 455.

DONE AND ORDERED in Chambers in Orlando, Florida, this 27th day of September 1993.

*Anne C. Conway*
ANNE C. CONWAY
United States District Judge

Copies; Counsel of Record
Magistrate Judge Donald P. Dietrich

[1] --Gabe Kaimowitz

**(City Seal)** **CITY OF ORLANDO**

*March 31, 2003*

*To: Gabe Kaimowitz:*

*On 3-13-03, you requested via e-mail 8 letters under the category of "Correspondence with Judge Conway.*[1]*" My staff immediately looked for the requested documents*

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[1] --The letters identified in Mayor Glenda Hood's mail log, included the following entries on Mail Log Sheets by date:

DATE: Nov. 2, 2000--NAME and (Address or Company) Ann C. Conway, Judge, U.S. District Court, US Clerk, Office of the Clerk, United States Courthouse, 80 North Hughey Avenue, Orlando, FL 32801 TO: General Services Administration: COMMENTS: Concern about design of proposed Orlando Federal Courthouse, ROUTED TO: (Date): FW: F. Kittinger

DATE: November 28, 2000--NAME and (Address or Company) Ann C. Conway, Judge To: Thomas H. Walker Cc. Mayor Hood COMMENTS: Letter that advises the GSA of modifications desired for the Orlando Courthouse Annex. ROUTED TO: (Date); FW: F. Kittinger

DATE: December 8, 2000--Thomas H. Walker to: Judge Anne C. Conway, cc: Mayor Hood , COMMENTS: Response to previous concerns about the design of the Orlando Courthouse.

DATE: December 13, 2000--Glenda E. Hood to: Mel Martinez, Orange County Chairman, Orange County Administration Center, 400 E. South Street, 5th Floor, Orlando, FL 32803: COMMENTS: Re: school capacity policy effect on efficient urban form, infill and downtown housing.

DATE: January 2, 2001--Anne C. Conway To: Mel Martinez cc; Mayor Hood COMMENTS: Letter seeking support for new design of federal courthouse.

DATE: January 11, 2001--Anne C. Conway To: Honorable Bob Graham, cc: Mayor Hood COMMENTS: Concern about the design of the new Federal Courthouse. ROUTED TO: (Date); FW: F. Kittinger

DATE: February 1, 2001--Parramore Heritage Renovation Foundation, Inc. 397 West Church Street, Orlando, FL 32801-2512 COMMENTS: Resolution to clarify the Foundation's position on the new Federal Courthouse.

DATE: MAY 4, 2001--Judge Anne C. Conway United States District Court COMMENTS: Notice of the Court's compromise proposal for the Orlando federal courthouse. FW: D. Turner

*in Mayor Hood's correspondence boxes which I had already provided to you in an earlier request. When the documents were not located there, I sent you an e-mail response on 3-14-03, with a time/est for the retrieval of the 42 items you asked for. You replied that you were unwilling to provide a deposit, but would pay for up to 2 hours of staff time.*

*Since the items were not in Mayor Hood's correspondence files, I asked other City departments who might have filed on the federal courthouse project to check their files for the 8 items. I provided you with a copy of the 11/27/000 letter on Friday March 28th as well as 2 other letters[2] that were part of your initial request of 42 items.*

*As I indicated to you when we discussed this matter on 3/28/03, Mayor Hood frequently referred correspondence to staff members who handled those particular projects. I will contact you if I am able to locate the additional seven items.*

*Amy Iennaco,*
*Asst. City Attorney*

---

[2]--Those letters between Orlando's Thomas Kohler on April 7, 1998, and then Chief Judge Elizabeth Kovachevich, Tampa regarding the U.S. Courthouse Project are provided immediately after docket excerpts on the next two pages.

**U.S. District Court**
Middle District of Florida (Orlando)
CIVIL DOCKET FOR CASE #6:98cv00308

USA, et al., v. 3.864 Acres of Land, et al., Filed 03/17/98
Assigned to Judge Maurice B. Cohill, Jury demand: Both
Demand: $0.000 Nature of Suit: 210
Lead Docket: None Jurisdiction: US
Dkt# in other court: None Plaintiff
Cause: 40:258(a) Public Buildings
& Property: Land Condemnation[1]

| *Parties* | [] | *Attorneys* |
|---|---|---|
| USA plaintiff | | Ralph Hopkins....<br>U.S. Attorney's Office<br>....<br>David Othel Vollenweider III<br>....<br>U.S. Department of Justice<br>Land Acquisition Section.... |
| v. | | |
| 3.864 ACRES OF LAND, known as the South half of the block bounded by Central Boulevard on the South, Hughey Avenue on the East, Washington Street on the North, and Division Avenue to the West, in the City of | | |

[1] --The U.S. sought to condemn land for the proposed U.S. Courthouse annex in the Southwest Quarter of Orlando.

Orlando, Orange County, Florida, defendant....

CAROLINA FLORIDA PROPERTIES Inc., a Florida Corporation, defendant.... [] Jon Martin Wilson....

**Docket Proceedings**

....

| Date | Doc. # | Image | Docket Entry |
|---|---|---|---|
| 03/17/98 | 1 | | COMPLAINT in condemnation and demand for jury trial filed-land condemnation action (spr) |
| .... | .... | | .... |
| **Date** | **Doc. #** | **Image** | **Docket Entry** |
| 03/17/98 | 7 | | ORDER directing counsel to review and certify compliance with Local Rule 1.04(c) within 10 days. (Signed by Judge Patricia C. Fawsett) ctc(spr) (Entry date 03/18/98) |
| 03/18/98 | 8 | | NOTICE of designation under Local Rule 3.05-TRACK 2... |
| 03/18/98 | 9 | | ORDER transferring case to the Honorable Joseph W. Hatchett, Chief Judge of the Eleventh Circuit Court of Appeals, for reassignment of the case to a judicial officer whose duty station is not located within the jurisdiction of the Middle District of Florida (Signed by Chief Judge Elizabeth A. Kovachevich and Judge Patricia C. Fawsett) ctc (spr) |

| | | |
|---|---|---|
| 04/07/98 | 21 | ORDER/designation by Chief Judge Joseph W. Hatchett for services of Senior Judge Maurice B. Cohill, Jr., of the United States District Court for the Western District of Pennsylvania, in the Middle District of Florida, signed by the Chief Justice of the United States. ctc (spr) |
| 04/07/98 | 22 | NOTICE OF CASE REASSIGNMENT to the Honorable Judge Maurice B. Cohill, Jr., Notice to Counsel |

(Image of Buildings)
**Downtown *Orlando***

April 7, 1998

Ms. Elizabeth A. Kovachevich,
Chief District Judge, U.S. District Court
611 North Florida Avenue
Tampa, Florida 33602

Dear Judge Kovachevich:

We greatly appreciate your taking the time to meet with us on April 1, 1998, to share your ideas and concerns for the design of the new U.S. Courthouse Annex for Orlando. We found the discussion and your candor refreshing, and we look forward to working with you toward a new facility which has a "global appeal" and is user friendly. If two terms could fairly describe Orlando's downtown, those are good ones.

As you requested in our meeting, we will gladly work with GSA to any extent possible to assure a community-integrated facility design, and will be happy to explore shared solutions to your parking concerns. The best way we have found to accomplish good design is to begin with the right designers. To that end, we look forward to being included in the selection committee in an ad hoc advisory capacity and we were happy to hear that GSA's representatives and you concur. We assume this means we will have access to the submission materials as well as the decision meetings.

We also appreciate Judge Fawsett's and your clear expressions of support for cooperation with the DDB at the A-E pre-submission meeting on April 2, 1998. Some architects have already contacted us regarding what is going on in downtown Orlando and with questions about the annex's possible impacts on adjacent neighborhoods. We think that's a good sign.

Downtown Development Board
100 South Orange Avenue, North Florida, Orlando, Florida 3201
PHONE (407) 246-2555 FAX (407) 246-2848



Once again thanks for this opportunity. Please feel free to call on us for any assistance we can provide you in this project.

Sincerely,
*Thomas R. Kohler*
Thomas R. Kohler
Executive Director

TRK/sc

cc: Glenda E. Hood, Mayor, Derek C. Burke, DDB Chairman, Judge Patricia Fawsett, US District Court, Stacy Cowles, GSA, Michelle Price, GSA, Rick Bernhardt, Orlando City Planning

**UNITED STATES DISTRICT COURT**
**Middle District of Florida**
**Room 108, Federal Courthouse**
**6111 N. Florida Avenue**
**Tampa, FL 33602-4514**

RECEIVED
APR 17 1998
DOWNTOWN
DEVELOPMENT
BOARD

April 13, 1998

Mr. Thomas R. Kohler, Executive Director
Downtown Development Board
100 South Orange Avenue, Orlando, FL 32801
Telephone: 407-246-2555/Fax: 407-246-2848

Dear Mr. Kohler:

Thank you for your letter dated April 7, 1998, concerning the new United States Courthouse Annex planned for Orlando. I am pleased to hear that you are looking forward to being involved in this project and are willing to assist in making this project a success. If all interested parties work together in a cooperative manner, I am sure that we will build a facility of which we can all be very proud. Again thank you for your willingness to participate. With warmest personal regards, I am
Sincerely yours,
*Elizabeth A. Kovachevich*
ELIZABETH A. KOVACHEVICH
Chief Judge, Middle District of Florida
EAK: RDS: sb
c: Hon. Patricia C. Fawsett, United States District Judge, Middle District of Florida, Hon. Glenda E. Hood, Mayor of the City of Orlando, FL Derek C. Burke, Chairman, Downtown Development Board Richard D. Sletten, Clerk, U.S. District Court, Middle District of Florida, Stacy Cowles, Project Manager, General Services Administration, Michelle Price, Contracting Officer Representative, General Services Administration, Rick Bernhardt, Orlando City Planning

GSA **GSA Southeast Sunbelt Region**

**MAY 02 2003**

Mr. Gabe Kaimowitz, Esq., Florida Representative
Attorneys Against American Apartheid 4411 SW 34th Street, Suit 1305, Gainesville, FL 32608-7544

Dear Mr. Kaimowitz:
Thank you for your March 26, 2003, Freedom of Information Act (FOIA) request for a copy of documents furnished by the owner of the perspective design team and others at the beginning of the project, relative to Contract No. GS-04P-98-EXC-0021, Orlando, FL

Enclosed is a copy of the documents that we have been able to collect as of this date. We are providing you with this preliminary copy of documents, as we understand you have a pressing need to receive this information. Based on our telephone conversation earlier in the week, you stated that you were interested in receiving documents with the following names in the body or a carbon copy: 1. Thomas Kohler, Director, City of Orlando, FL Community Redevelopment Agency (also known as the"Downtown Development Board.") 2. Glenda Hood 3. Paramor Heritag[1] Initially, Item 6 was too broad in scope for us to identify by specific documents that would satisfy your request. However, you clarified by telephone that this should be specific to the Orlando project. Based on the clarification you provided in our telephone conversation, we conducted a second review of available files and found that there is still a vast amount of documents that correspond to your request..

U.S. General Services Administration
77 Forsyth Street, SW Atlanta, GA 30303-3427....

Sincerely, *Mildred W. Quinley*

Enclosures Freedom of Information Act Officer

[1] --Correct spelling is Parramore Heritage.

**PROJECT MANAGEMENT PLAN**
for the **U.S. Courthouse Orlando, Florida**
Project No. -NFL97002 Bldg. No. -FL 0025ZZ
Southeast Sunbelt Region-4 Atlanta, Georgia
**August 23, 1999**
Jill K. Shafer, Project Manager
Michelle Price, Assistant Project Manager

....

I. INTRODUCTION/PROSPECTUS
VALIDATION STATEMENT
**U.S. Courthouse, Orlando, Florida**
**I. INTRODUCTION.... II. PROSPECTUS VALIDATION.... III. SCOPE STATEMENT**

Ultimately the U.S. Courthouse Complex in Orlando, including the new building, the existing Federal Building/Courthouse (FB-CT) and any future construction/renovation, will be a singular judicial complex. The complex will provide a secure environment, separate public/private/secure circulation, reinforce the urban planning of the City of Orlando, emphasize the importance of the United States Courts, promote dignity of the judicial process, implement up-to-date technologies and provide protection to federal employees and citizens conducting business in the complex. The new facility will be designed to fit within the context of the existing City of Orlando, address neighborhood issues and otherwise become a welcomed member of the community. The courthouse structure will be constructed on the 3.846-acre site immediately adjacent to the existing FB-CT structure....

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**MEMO TRANSMITTAL**

Jill K. Shafer, RA, NCARB, PMP, Project Manager, U.S. General Services Administration, S.E. Sunbelt Region, 401 West Peachtree Street--Suite 2500, Atlanta, GA 30365-2550 678 776 5824....
DATE: November 8, 1999

TO: The Honorable Joel F. Dubina, United States Court of Appeals, Frank M. Johnson, Jr., Federal Building and Courthouse, 15 Lee Street, Montgomery, AL 36104
FROM: Jill K. Shafer....Project Manager
RE: United States Courthouse, Orlando, Florida

Enclosed please find for your use and information the following materials: • Project Management Plan--dated August 23, 1999; • 3 Separate Meeting Agendas (November 3-5, 1999) and • The Partnering Report for the Orlando Courthouse Project. Should you have any questions, concerns or request any clarification, please do not hesitate to contact me. Jill K.

**Orlando Vision and Mission Statement**

**We commit ourselves to work together in a spirit of cooperation, collaboration and trust while having fun in the process. We will work to create the first dedicated Federal Courthouse in Orlando, providing a symbol of justice and democracy, with state-of-the-art courts planning, security and technology, for today, and into the future. The courthouse shall make a positive contribution to the City's development, have a strong regional identity, make a statement to the world and demonstrate the wise use of public resources.**

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**MEMO TRANSMITTAL**

Jill K. Shafer....

DATE: November 8, 1999
TO: Ms. Sheryl Loesch, Clerk of the Court, United States District Court, Middle District of Florida, 80 North Hughey Avenue, Orlando, FL 32801
FROM: Jill K. Shafer...Project Manager
RE: United States Courthouse, Orlando, Florida

Enclosed please find for your use and information the following materials: • Project Management Plan--dated August 23, 1999; • 3 Separate Meeting Agendas (November 3-5, 1999) and • The Partnering Report for

the Orlando Courthouse Project. Should you have any questions, concerns or request any clarification, please do not hesitate to contact me. Jill K.

**Orlando Vision and Mission Statement**

....

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November 8, 1999

Mr. Dean J. Grandin, Jr., AICP, Planning and Development Department Director, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801

Re: Orlando Courthouse Project

Dear Dean:

It was good to have the opportunity to meet you last week during the Orlando Courthouse Project Kickoff Session in Orlando. I do hope that, like me, you found the day well spent both becoming more familiar with the project but more importantly the players on the Team. Your attendance and future participation with the Project Team is important and I thank you for taking the time to spend the day with us and look forward to working with you in the future. Enclosed is a copy of the outcome of the two-day partnering event that followed the Kick-Off. I believe there is useful information there for your review and consideration.

Sincerely, Jill K. Shafer....

Encl. ***Vision and Mission Statement***-....

---

November 24, 1999

Honorable R. Lanier Anderson III

Chief Judge, United States Court of Appeals

Post Office Box 977, Macon, GA 31202-0977

Dear Chief Judge Anderson:

On behalf of the General Services Administration, the Southeast Sunbelt Region, and the Orlando project team,

I want to thank you for your efforts in coordinating and facilitating our meeting on Monday, November 22, 1999. I firmly believe that the support you, Judge Dubina,

Judge Evans, Judge Paul and the Administrative Office of the United States Courts demonstrated, will be instrumental in our future progress and ultimately the success of the Orlando Courthouse project.

We understand that the court's team, including Circuit Judge Dubina, Chief Judge Evans and Senior Judge Paul will work closely together with our project team and further that Judge Paul will be the principal contact working with the team on a regular basis. As agreed, Ms. Jill Shafer, Project Manager, will be contacting Judge Paul shortly to arrange a meeting, in Orlando, with participation from Judge Evans, Judge Dubina and the Administrate Office of the Courts, in an effort to begin to develop follow-on efforts relative to moving the project forward. We look forward to having the opportunity of working with you to complete this project in a cooperative and expeditious manner.
Sincerely, Paul Chistolini Deputy Commissioner
cc: Robert Andrukonis Jack Chandler Judge Joel F. Dubina Ross Eisenman Chief Judge Orinda Evans Clarence A. Lee, Jr. Gate Lew Judge Maurice Paul....

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March 8, 2000

The Honorable Joel F. Dubina, Circuit Judge
United States Court of Appeals,
Frank M. Johnson Jr., Federal Building and U.S. Courthouse 15.Lee Street, Montgomery, AL 36104

The Honorable Maurice A. Paul, Senior District Judge
United States District Court, 307 Federal Building,
401 Southeast First Avenue, Gainesville, FL 32601-6805

The Honorable Orinda Evans, Chief Judge
United States District Court 1988 Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW Atlanta, GA 30303-3361

Dear Judges Dubina, Paul and Evans:

On behalf of the entire Orlando Project Team, let me extend to you our sincerest appreciation for your time and effort in support of the Team during the last several months. We simply could not have moved the Project forward without your assistance, guidance and sincere interest. Although we are quite pleased to have the Middle District back in the process, I believe I speak for everyone on the Team when I say we will miss working with you in the future. Please do stay in touch and let us know how we might keep you updated during our exciting and challenging adventure.
Sincerely, Jill K. Shafer....
cc: Thomas H. Walker, Assistant Regional Administrator
Michelle Price, Assistant Project Manager

---

***MEMO*** Jill K. Shafer....
DATE: 3/15/00
TO: Judge Anne Conway, District Judge
FROM: Jill K. Shafer, Project Manager
Judge Conway:
I...look forward to meeting you Friday, March 17th. In preparation for the various meetings that day, I enclose information that will be beneficial to you. Should you have any questions at all please feel free to contact me.
1. E-Mail-to Judge Paul re Art in Architecture Meeting Friday March 17th 10:00-2:00 Officers of CH2Mhill 225 East Robinson Street, Suite 505 Orlando, FL 407 423 0030 2. Art in Architecture Panel Listing 3. Art in Architecture Agenda 4. Orlando Introductory Security Meeting Agenda- 3:00-4:30 Orlando Courthouse U.S. Attorney's Office Conference Room 2nd floor - 407-808-3837 5. United States Courthouse Project-Data Sheet-Handout for the Security Meeting
Jill K. cc: Michelle Price

***Vision and Mission Statement....***

Jill K. Shafer@GSA

To: Larry_Smith@flmd.uscourts.gov
cc: linda.lockett@gsa.gov.freeman.randolph@gsa.gov, michelle.price@gsa.gov
anne-conway@ca11.uscourts.gov,
sheryl_loesch@ca11.uscourts.gov, eahear@ch2m.com,
Ross_Eisenman@ao.uscourts.gov,
John_Myers@ao.uscourts.gov
Subject: Selection of GC for Orlando, FL

Larry:

Thank you for your timely response. We are most pleased that you and Judge Conway will be able to work with us on this very important aspect of the Orlando Courthouse Project. Shortly you will be receiving an outline of the General Contractor Procurement Schedule with specific tasks identified for your participation. Should you have any questions, please feel free to advise.

Jill K. Shafer 678 776 5824

From: Larry_Smith@flmd.uscourts.gov.AT internet 04/12/2000 08:50 AM....

To: linda lockett@gsa.gov AT internet@ccMTA-GEMS-MTA-01

cc: freeman.randolph@gsa.gov AT internet@ccMTA-GEMS-MTA-01,
Jill K. Shafer/4PCA/RO4/GSA/GOV, michelle price@gsa.gov AT internet@ccMTA-GEMS-MTA-01,
ANNE_CONWAY@flmd.uscourts.gov ATinternet@ccMTA-GEMS-01-MTA-01,
ELIZABETH_KOVACHEVICH@flmd.uscourts.gov AT internet@ccMTA-GEMS-MTA-01,
RALPH_NIMMONS@flmd.uscourts.gov AT internet@ccMTA-GEMS-MTA-01
Sheryl_Loesch@flmd.uscourts.gov AT internet@ccMTA-GEMS-MTA-01 internet@ccMTA-GEMS-MTA-01

Subject: re: selection of gc for orlando, fl

Linda, As discussed in Orlando this past week, the Middle District of Florida desires to participate on the Source Selection Advisory panel relative to selecting the General Contractor for the construction phase of the new Orlando Annex project. Our representatives will be: The Honorable Judge Anne C. Conway, U.S. District Judge Mr. Larry Smith, Director of Security, Space and Facilities--Larry

_____Reply Separator_____

Subject: Selection of GC for Orlando, FL

Author: linda.lockett@gsa.gov Date: 4/11/00 6:08 PM

Hi Larry, during a conversation with Michelle, she indicated that you had informed her that Judge Conway and yourself expressed your desire to participate as Source Selection Advisory members relative to selecting the GC for the construction phase of the Orlando project. Would you please be so kind as to send a quick e-mail message confirming your desire to participate as Advisory members. If you could please advise by 4-14th or before, that would give us the time needed to better position ourselves before publishing the CBD on 4-27th. My e-mail address is linda.lockett@gsa.gov. Again, thank you for your assistance, Linda Lockett

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• LEERS WEINZAPFEL ASSOCIATIONS• (logo) HLM design

**Project Memorandum**

US Courthouse, Orlando, FL — **990236.00**

(Project) — (Project Number)

**5/8/00**

(Department/Description) — (Date)

**HLM Design Conference Room/11:00 a.m.**

(Location/Time) — (Revised/Revision)

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Purpose:

Final blocking and stacking review meeting.

Attendees: The Hon. Elizabeth Kovachevich USDC The Hon. Anne Conway USDC Sheryl Loesch USDC Sherrill Newton USDC Larry Smith USDC Jack Chandler 11th Circuit Elaine Fenton 11th Circuit John Myers AOUSC Tom Jenkins AOUSC Jim Bishop US Probation Tom Primosch US Pretrial Services Eric Thompson USMS Bernie Williams USMS Robert Andrukonis GSA Jill Shafer GSA Martha Pollock GSA Drew Pedrick CH2M Hill Michael Zanin Vitetta Walter Hawkins City of Orlando Ken Austin Orlando DDB Richard Unger City of Orlando Sam Vennero City of Orlando Andrea Leers LWA/HLM Josiah Stevenson LWA/HLM Joe Waddell LWA/HLM Bob Egleston LWA/HLM

00/99236jo6.six Leers Winzapfel Associate HLM Design 280 Summer Street Suite 1100 Boston, MA 02210 FAX: 617-482-7257
Telephone: 617-423-5711
800 North Magnolia Avenue, Orlando, FL 32803-3866
FAX: 407.422.7066 Telephone: 407.422.7747

rev. 4/21/98



Discussion--Andrea Leers opened the meeting and briefly reviewed the blocking and stacking process. A review of the potential future site development has been performed. The task is to balance the court development with the impact or development of the city. Three key areas would be discussed during the meeting. 1. The site within the city. 2. The city's goals and plans. 3. Block/ stacking options.

**Site Issues**

1. The fabric of the downtown area was briefly reviewed including the areas adjacent to the site. 2. It is important to create site amenities since none currently exist. 3. The design team's goal is to build on the historic importance of Central Boulevard. The site is deemed a good one due to its centrality to the city.

**City Goals**

1. Parking continues to be an on-going question. There are other factors that may influence parking such as the future law school or development of neighborhoods to the west. In addition, parking may need to be provided elsewhere for jurors and the public.

2. Concerning parking, the needs may be accomplished based on the availability of land. Sam Vennero briefly reviewed current locations of downtown parking;

a. Parking Lot 12 and 121A are located just north of the courthouse site and are used for the state buildings and existing courthouse.

b. Parking under I-4 is used for long and short term parking.

c. The parking lot underneath I-4 south of Central is used primarily for the Church Street complex.

d. The Church Street parking garage is used for city police and public parking. Retail space was added to spur growth in the area.

e. The central parking garage east of I-4 is currently full and there is a waiting list for future parking.

f. Most...downtown parking areas are currently full.

3. It was noted that the potential I-4 expansion will decrease some spaces in the downtown area. This could be up to 100 spaces.

4. There are also possibilities for a future Lymmo expansion (downtown bus loop). One option would be to expand east to the Washington area and perhaps down Hughey to Central. This is currently included in the city's 2010 plan, although there is no indication of when this may actually be implemented.

5. Judge K expressed concern about noise from I-4 on the potential law school location (in the Lot 12 and 12A area). She noted that the District Court is not part of the law school site selection committee, however, they have offered to participate in an advisory role.

6. A question was brought up concerning the future of the Parramore area. Ken Austin noted that it is being converted from industrial and single family zoning into residential and business zoning. The Parramore area is bounded by Parramore Street on the west to I-4 on the east and Colonial Drive on the north to South Street on the south . The city is currently looking for further development of the area. One proposed project is Church Street Square, which will be located just south of the Church Street garage. This potential development would encompass office, retail, and residential uses.

7. It was also questioned as to what the plans are for the block just west of the site. The city responded that there are no current plans for further development of this area. There has been some discussion of swapping out warehouse buildings for future development. There is some new zoning in the works for that area and it could be changed to allow for more dense housing such as apartments. Therefore, the area could go a number of directions, but it was noted that the city cannot drive the market, but they can try to steer it.



8. Some adjacent sites are highly desirable to be reserved for future parking. Any new development in the Parramore area will need parking. Close, reasonably priced parking is desirable for courthouse use. It was noted that the Church Street garage can expand vertically. It is currently running at $40 per month, while most of the downtown garages cost $75 per month. It was also noted that any new parking garage downtown must provide a certain percentage of spaces for public parking.

9. Ken Austin mentioned the streetscape improvements are planned for Central Boulevard. The city would provide the actual construction of the streetscape. At this point, it does not appear that Division or Hughey would receive any streetscape treatment.

It was also noted that the Mission on the south side of Central has expressed a desire to move out of that location. They have spoken with the Police Department about buying the building, but nothing has progressed.

10. The discussion continued regarding the actual space needs for parking. Some factors to be considered regarding the spaces required are the potential loss of I-4 parking, the loss of parking with the addition of the new law school, plus the additional parking required for the new courthouse. As a result, Sam Vennero needs proposed numbers of spaces in order to analyze the impact to the downtown parking situation. It is possible that the courts could rent 200-300 spaces with an additional 100-200 for public parking. It is also important to understand if the courts would commit to the city to lease a certain number of spaces when the building is complete and Bankruptcy moves back into the existing building.

11. It was requested that the courts work on exact parking counts for 2004 or 2005 to include both employees and visitors. The city would then analyze and consider a request for additional parking. It is possible that a meeting could occur within the next three weeks to discuss this issue further.

12. It was also requested that the city assist with streetscaping on the south side of Central Boulevard. The city is willing to commit, but were not sure of the extent of the streetscape. The streetscape was noted to match the balance of the downtown streetscape plan.

13. Currently the city does not own any surplus land around the site which could be utilized for parking. The city would need to purchase land and construct a parking garage which would drive the per-month charge up. It was questioned whether GSA could buy additional land and building a parking garage for the 30-year needs.

**Blocking/Stacking**....

*Project Memorandum--9900236.00* *May 8, 2000*
*US Courthouse, Orlando, FL* *Page 3*

....Schedule The next meeting to be held will be during the concept phase. The first concept meeting will be held on June 19, 2000 at the HLM Design office in Orlando. The meeting is anticipated to run from 11:00 am to 3:00 pm. On June 20, an art in architecture meeting will be held in Orlando at 10:00 am. Reported by Robert E. Egleston, AIA, Project Manager AR-0011608
REE:LFB:je cc: Attendees

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May 26, 2000 Ms. Sheryl L. Loesch, Clerk of the Court United States District Court Middle District of Florida 80 North Hughey Avenue Orlando, FL 32801-2278
Re: U.S. Courthouse Project, Orlando, Florida
Dear Ms. Loesch:
We are in receipt of your May 25, 2000 letter and binder of color renderings. Your letter very clearly articulates many of the court's concerns and will certainly be of use to the designers and we appreciate your providing them....
In response to the overall design strategy you describe, I believe that the Team has carefully studied the issue of focus on Division Street and have moved beyond it as an option. We moved on for numerous reasons:
• Historic significance and strength of West Central Boulevard as an East/West connector to the downtown • Recommendations by urban designers to address West Central Boulevard, and • The City's focus on developing and upgrading West Central Boulevard, as outlined in both the Orlando City Streetscape Improvements Downtown Outlook Plan and Orlando's Plan for its Central City Neighborhoods, dated 2/28/2000. It is important to remember that placing the focus on West Central Boulevard in no way precludes development of an attractive and appropriate face to the neighborhood west of Division Street....

Ms. Sheryl L. Loesch, Clerk of Court

....I will be providing a copy of your letter to the Leers/HLM Design Team because it captures information that will be of use to them. However, I have determined that it would be most inappropriate for me to forward the "generic concept sketches, as it is much more valuable to the design team that the courts describe their functional needs rather than provide graphic solutions.

Again, we appreciate your support and interest and look forward to the next phase of this project. Sincerely,

Jill K. Shafer....

c: Chief Judge Elizabeth A. Kovachevich Judge Patricia C. Fawsett Judge Anne Conway Larry Smith Director of Security, Space and Facilities....

==========

United States District Court

(**US Eagle Logo**)Middle District of Florida

801 N. Florida Avenue

Tampa, FL 33602-3800

**Elizabeth A. Kovachevich** (813) 301-5730

Chief Judge FAX (813) 301-5740

July 19, 2000

Ms. Jill K. Shafer, PM, RA, NCARB, PMP

U.S. General Services Administration,

Southeast Sunbelt Region, Property Development Division 401 West Peachtree Street NW; #2500 Atlanta, GA 30308 Tel: 67-776-5824 FAX: 404-331-7696

Re: Orlando Courthouse Annex Project

Dear Ms. Shafer:

We feel there has been a breakdown in communications on the Orlando Prospective Project. This must be corrected if we are to move forward cooperative and avoid dissent and division among the team. There are three (3) areas that must be addressed: First, is minor but was in our view the beginning of the current discord. It is the resolution of the program....

Second, we are concerned about the architectural expression of all the designs. We have repeatedly expressed our preferences for a more traditional design aesthetic and we continue to see more and growing indications of a design that is going to be on the extreme of an austere stripped down modernism. This hard cold machine-like vocabulary is the antithesis of what we think the justice system and the representative building should convey to the public. We have a very skilled and professional design team who are more than capable of designing a building that not only meets our functional needs but also provides the traditional look for which we have repeatedly asked. Is it too much to ask that the materials used, and the design and detailing of the Orlando building reflect a respect for traditional ideas? As an example the USAOC building in Washington, D.C. is modern and progressive without ignoring or offending its ...neighboring buildings. It complements rather than confronts its surroundings. That is all we are asking for in Orlando. This will fit in very well with other new public buildings in Orlando such as the City Hall and new state courthouse.

Third and final, is the orientation of the building. This has never been open to real discussion; it seemed predetermined that the building would face Central Avenue. One idea that we wanted explored was all buildings facing a central plaza in the middle of the block; another is facing Division. The real point is that we do not feel that there has been sincere healthy exploration of other opinions and ideas. We look forward to discussing these issues with you at the meeting on Thursday.

Sincerely yours,

*Elizabeth A. Kovachevich* — Chief District Judge

*Anne C. Conway* — District Judge

EAK: ACC:sp c: Chief Judge R. Lanier Anderson, III
Judge Joel F. Dubina Judge Maurice M. Paul....

United States District Court
(**US Eagle Logo**)Middle District of Florida
801 N. Florida Avenue
Tampa, FL 33602-3800
**Elizabeth A. Kovachevich** (813) 301-5730
Chief Judge FAX (813) 301-5740

July 27, 2000

Ms. Jill K. Shafer....

Dear Ms. Shafer: I acknowledge receipt of your letter of July 21, 2000, concerning the schedule GSA intends to follow selecting the final concept design for the new Orlando courthouse, namely, on: --August 1, 2000 in Boston for the review of the four remaining concept designs, and --August 15, 2000 in Orlando at which time GSA intends to display the final concept design, anticipated to last for a four-hour period.

Although several judges, particularly from the Court's Orlando Division, wanted to attend the meeting at which the principal design opinions would be discussed, none, including Judge Conway, who has been our principal representative, are able to take part in the meeting on August 1, 2000, in Boston. However, I will be there and have asked Judges Wm. Terrell Hodges, from our court, and Joel Dubina, on behalf of the judicial council, to attend. All of us in the Middle District remain committed to a partnership with GSA on this project for the benefit of the court, the bar, and the public, and we look forward to objectively analyzing with you the four concept designs under current consideration. With kindest personal regards, I am,

Sincerely yours, *Elizabeth A. Kovachevich*

ELIZABETH A. KOVACHEVICH
Chief U.S. District Judge, Middle District of Florida,

EAK/nsn c: Chief Judge R. Lanier Anderson, III Judge Joel F. Dubina Judge Orinda D. Evans Judge Maurice M. Paul Judge Wm. Terrell Hodges Judge Anne Conway....

United States District Court
Middle District of Floridaq
George C. Young U.S. Courthouse & Federal Building
80 North Hughey Avenue
**Anne C. Conway** Orlando, Florida 32801
United States District Judge (407) 835-4270

November 27, 2000

Mr. Thomas H. Walker, Assistant Regional Administrator
Public Buildings Service General Services Administration
401 West Peachtree Street Atlanta, Georgia 30365

Re: Orlando Courthouse Annex

Dear Mr. Walker:

Glenda Hood, Mayor of the City of Orlando, is coordinating the meeting to discuss proposed modifications to the design of the Orlando Courthouse Annex. You asked me to write and advise you in advance of the meeting what modifications we desire. All we want is what we have been asking for since the inception of this project.

1. A building that looks like a traditional courthouse, not unlike those recently built by GSA in Tallahassee, Florida, Montgomery, Alabama, Youngstown, Ohio and numerous other cities. We want a courthouse design that is sensitive to the neighborhood; one that does not have window treatment reminiscent of bars on windows and otherwise offend our neighbors. Further, the courthouse should be designed so that it is not necessary to add a bubble to contain the special proceedings courtroom.

2. A building that is as far away from I-4 as possible. If the present design must be used with exterior modifications, it should be turned onto Division Avenue with the entrance flipped so that it is facing the George C. Young Building with a public plaza between the two buildings. As you know, Orlando has been selected as the site for the new Florida A&M law school. The law school will be immediately north of the present building on

Hughey Avenue. What would be more welcoming to the A&M community than a public plaza inviting them across the street to the courthouse? Your present plan calls for a fenced parking lot to be immediately across from the new law school. Flipping the building also makes it more accessible for those courthouse users who will remain in the George C. Young Building, such as Public Defender and U.S. Attorney personnel. The employees in the Annex would be able to more easily use facilities, such as the snack bar, which will remain in the George C. Young Building. The fenced parking lot would be across from I-4 and offensive to no one.

3. A building which does not cost the taxpayers a fortune to maintain. The four story atrium should be reduced to a two story atrium. Such a reduction would provide more usable space on the third and fourth floors, would allow the special proceedings courtroom to fit in the building, and would reduce the cost of air-conditioning unused space.

4. A building that can be designed and built with materials that are easy to maintain. The landscaping included in the Annex is a waste of money. GSA has never maintained any landscaping around the present building, nor does GSA regularly clean windows. Using glass as a primary building material is ridiculous.

5. A building that affords the utmost safety and security for employees and visitors.

The North Atrium, designed by Ms. Leers, and selected by the Court as the preferred concept, met most of our concerns. Inexplicably, a concept which had been rejected early on in the process was chosen over the Court's objection. Every other Court that has gone through this process was given a say in say their courthouse looked like. We are asking simply to be treated the same way. What we are asking for is not unreasonable. GSA should make the changes we have requested so that we can continue together to build a

Courthouse Annex for Orlando that meets the needs of the Court and the interests of the community.

Sincerely, *Anne C. Conway*

Anne C. Conway

c: Chief Judge Anderson Chief Judge Kovachevich
The Honorable Glenda Hood

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**(GSA) U.S. General Services Administration**
**(LOGO)** Southeast Sunbelt Region

Michelle Price 4 PCA (Arrow) Dec 2000
RECIEVED____DEC 01 2000 (Receipt Stamp/Clock)

The Honorable Judge Anne C. Conway
United States District Court Middle District of Florida
George C. Young Courthouse & Federal Building
80 North Hughey Avenue Orlando, FL 32801

Dear Judge Conway:

Thank you for your letter dated 11/27/00 regarding the Orlando Courthouse. As we discussed on November 1, 2000 we will "agree to disagree" on the exterior of the Orlando Courthouse design. However, we also agree that the General Services Administration (GSA) will not be changing the exterior design, nor will we resite the structure within the city block or go back to another concept. The designers and team, including the Courts, spent the good part of October 1999 through May 2000 in the Pre-Design phase studying these issues. We will, however, be willing to look into the idea of a public plaza along West Washington Street.

It is my understanding that the direction, from both the Courts and the United States Marshals Service, is that no public access to the interior of the site is acceptable, including the specific direction that no staff access to the rear entrance of the George C. Young facility will be provided. This may dictate that any public plaza be along the public edge of West Washington. We are certain that, in our continuing discussions with Tom Kohler of the Downtown Development Board, they would

be willing to consider implementing their "streetscape plan" for West Washington Street in coordination and cooperation with the GSA.

**401 West Peachtree Street, Atlanta, GA 30365-2550**

-2-....

We look forward to continuing to work with the Courts on the interior of the building and I look forward to seeing you on December 7th at the next meeting.

Sincerely, *Unreadable Signature*

Thomas H. Walker, P.E., Assistant

Regional Administration Public Buildings Service

cc; Chief Judge Anderson Chief Judge Kovachevich

The Honorable Glenda Hood Paul Chistolini Robert Peck

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**OrlandoSentinel.com...Anger over courthouse won't die** *Susan Clary of the Sentinel Staff Posted February 2, 2001* Government builders planning a new federal courthouse in Orlando have run afoul of an alliance of unlikely architectural critics--federal judges, court workers, and even civic leaders....

....Tom Kohler, executive director of the Downtown Development Board, and Ken Austin, an architect with the Board, said they were pleased with the way Leers responded to their request to position the building to face the neighborhood. "The quality GSA has put into their projects have been extraordinary," Kohler said....Walker rejected the accusation that GSA officials have tried to bully the community into accepting the design. "The idea we go into these things showing how big and mean and strong we are is just not true," Walker said. "Nobody has come to talk to us with an open mind." His opponents disagree. "They're not interested in negotiating with us," Judge Conway said. "We would like to sit down with someone from GSA who is interested in designing something for Orlando." http://www.orlandosentinel.com/news/local/orl-asec-court-020201.story.

March 2, 2001 The Honorable Judge Anne C. Conway
United States District Court Middle District of Florida
George C. Young Courthouse & Federal Building
80 North Hughey Avenue, Orlando, FL 32801
Subject: GSA Orlando Courthouse
Dear Judge Conway:
I am in receipt of your letter dated February 27, 2001 regarding the above referenced project. Please be advised that I am aware of the February 21, 2001 letter to Mr. Davis, Acting Administrator of the General Services Administration. The GSA has been taking steps to comply with the intent of the letter while working with Congressman Young's staff to set up a briefing to provide the information requested. While I regret the Courts' decision to suspend participation on the project, we hope that the matters before the Congressman can be resolved in short order so that the courts may return. Sincerely, Jill K. Shafer....c: Chief Judge Kovachevich....

**OrlandoSentinel.com., U.S. bends on courthouse**

*Tamara Lytle/Washington Bureau Posted June 29, 2001* WASHINGTON--The long and contentious dispute over Orlando new federal courthouse will be settled with a new design, U.S. Rep. Ric Keller said Thursday. The General Services Administration, which has been loath to change its glass-dominated design, acknowledged Thursday that it has agreed to accommodate area judges, law enforcement and other Orlando officials who hated the old proposal....Orlando Mayor Glenda Hood said the courthouse is important to the development of Parramore, a long-distressed portion of downtown. "The old design did not create an inviting connection to the FAMU law school and other parts of the neighborhood, she said. "They all have to work together."....
http://www.orlandosentinel.com/news/orl-loc-orcourthouse062901.story

**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF THE CLERK**
**WASHINGTON, DC 20543-0061**

**William. K. Suter**

Clerk of the Court

(202) 479-3011

December 10, 2003

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Re: Gabe Kaimowitz
v. United States District Court for
the Middle District of Florida
Application No. 03A495

Dear Mr. Kaimowitz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on December 10, 20003, extended the time to and including January 16, 2004.

This letter has been sent to those designated on the attached notification list.

Sincerely,

**William K. Suter**, Clerk
by GBJ
Gail B. Johnson
Case Analyst